***United States Court of Appeals***

***for the Second Circuit***

# APPENDIX

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74-2126

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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JOAN HULL, on behalf of herself and others similarly situated,

Plaintiff-Appellant,

- against -

CELANESE CORPORATION; CELANESE FIBERS MARKETING CO.; JOHN W. BROOKS, VERNON E. JORDAN, GRAYSON M.-P. MURPHY and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION; and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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# JOINT APPENDIX

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SECOND CIRCUIT

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## RELEVANT DOCKET ENTRIES

| Date | Proceeding |
|---|---|
| Aug. 27, 1973 | Complaint filed. |
| Sept. 13, 1973 | Summons with marshal's return filed. |
| Oct. 4, 1973 | Answer filed. |
| Oct. 31, 1973 | Plaintiff's Interrogatories to defendants filed. |
| Nov. 5, 1973 | Defendants' Interrogatories to plaintiff filed. |
| Jan. 4, 1974 | Plaintiff's Answer to defendants' Interrogatories filed. |
| Jan. 24, 1974 | Answer of defendants Celanese Corporation, Celanese Fibers Marketing Co., John W. Brooks and Allan Dragone to plaintiff's Interrogatories filed. |
| Jan. 31, 1974 | Answer and Objections of defendants Jerome B. Wiesner, Vernon E. Jordan and Grayson M.P. Murphy to plaintiff's Interrogatories filed. |
| March 13, 1974 | Plaintiff's Notice of Motions, Supporting Affidavits and Proposed Amended Complaint filed. |
| March 14, 1974 | Plaintiff's Interrogatories (Second Set) to defendant Celanese Corporation filed. |
| March 27, 1974 | Defendants' Notice of Motions and Supporting Affidavits filed. |
| April 10, 1974 | Affidavits of Donata Delulio, Joan Hull, Victor Rabinowitz, K. Randlett Walster, Herbert Jordan, Michael Krinsky, Leonard B. Boudin, Dorian Bowman, Eric M. Lieberman and Michael Standard, in Opposition to Defendants' Motions filed. |
| April 15, 1974 | Defendant Celanese Corporation Objections to plaintiff's Interrogatories filed. |
| April 17, 1974 | Reply Affidavit of Gilbert S. Edelson filed. |
| May 6, 1974 | Opinion and Order filed. |
| July 17, 1974 | Opinion and Order filed. |
| Aug. 15, 1974 | Plaintiff's Notice of Appeal filed. |

# COMPLAINT

UNITED STATES DISTRICT [illegible]
SOUTHERN DISTRICT OF N[illegible]

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JOAN HULL, on behalf of herself and others similarly situated,

Plaintiffs,

-against-

CELANESE CORPORATION; CELANESE FIBERS MARKETING CO.; JOHN W. BROOKS, VERNON E. JORDAN, GRAYSON M-P. MURPHY and DR. JEROME B. WIESNER, officers and directors of CELANESE CORPORATION; and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO.

----------x

Index No.
73 Civ. 3725

COMPLAINT
CLASS ACTION

Plaintiff, for her complaint alleges:

## I. INTRODUCTION

1. Plaintiff has brought this action against the defendants named above to secure her civil rights to equal opportunities with regard to sex. She seeks redress for past violations of those rights and the prevention of future violations for herself and all other women similarly situated.

## II. JURISDICTION

2. Jurisdiction of this Court is invoked pursuant to 42 U.S.C. §2000e-5 (f) (3). This is a suit in equity auth-

orized by and instituted pursuant to Title VII of the Act of Congress known as "The Civil Rights Act of 1964", 42 U.S.C. §§2000e et seq.

## III. CLASS ACTION ALLEGATIONS

3. Plaintiff brings this action as a class action pursuant to Rule 23(a) and (b) (2) of the Federal Rules of Civil Procedure.

4. The class that plaintiff represents is composed of all female citizens or residents of the United States who are now employed at Celanese Fibers Marketing Co. (CFMC") have been employed at CFMC at any time since April 8, 1967, and who will be employed at CFMC during the pendency of this action, and all women who have applied at any time since April 8, 1967, and who will apply during the pendency of this action, for positions at CFMC. The names and addresses of all the members of the class can be obtained readily from the defendants' files.

(a). The class, consisting of over one hundred women, is so numerous that joinder of all members is impracticable.

(b). Plaintiff's claims and interests do not conflict with the interests of any other class members. Upon information and belief, no other member of the class has instituted a similar action on her own behalf.

(c). The interests of said class are adequately and fairly represented by plaintiff. Plaintiff is a female employed at CFMC who has been subjected to discrimination in employment because of her sex.

(d). Common questions of law and fact exist affecting the rights of the members of the class. The practices of defendants alleged herein have been and are directed uniformly and routinely to all members of the class, and have deprived each member of the class of equal employment opportunities.

(e). Defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief and declaratory relief with respect to the class as a whole.

## IV. THE PARTIES

5. Plaintiff, Joan Hull, is a female citizen of the United States residing in the City and State of New York. She has been continuously employed in the New York City office of CFMC since July 1, 1963.

6. Defendant, CELANESE CORPORATION ("Celanese") is a corporation incorporated in the State of New York. Its principal office is located at 522 Fifth Avenue, New York, New York. Celanese is an employer within the meaning of 42 U.S.C. §2000e- (b) in that it is engaged in an industry affecting commerce and employs more than 25 persons.

7. Defendant CFMC is a division of Defendant Celanese. Its principal office is located at 522 Fifth Ave., New York, New York. Defendant CFMC is an employer within the meaning of 42 U.S.C. §2000e-(b) in that it is engaged in an industry affecting commerce and employs more than 25 persons.

8. John W. Brooks is the Chairman and Chief Executive officer of Celanese; Allan R. Dragone is the President of CFMC; Dr. Jerome B. Wiesner is a director of Celanese and Chairman of its Public Responsibility Committee; Vernon E. Jordan and Grayson M-P. Murphy are directors of Celanese and members of its Public Responsibility Committee.

## V. NO REMEDY AT LAW

9. With respect to each cause of action set forth in this complaint, plaintiff and the class she represents have

no plain, adequate or complete remedy at law to redress the wrongs alleged herein. This action, seeking declaratory and injunctive relief, and an accounting to redress past wrongs, is the only means of securing adequate or complete relief to plaintiff and the class. Unless defendants are enjoined, plaintiff and the class she represents and each member thereof will continue to suffer irreparable injury from defendants' policies, practices, customs and usages set forth herein.

FIRST CAUSE OF ACTION

10. Repeat and reallege each and every allegation contained in paragraphs 1 through 9 of this Complaint with the same force and effect as if set forth at length herein.

11. Defendants have a policy, practice, custom and usage of discriminating against female employees in promotions because of their sex and a policy, practice, custom and usage of limiting, segregating or classifying employees which deprives or tends to deprive female employees of employment opportunities through promotion because of their sex, in violation of 42 U.S.C. §2000e-2.

12. Ms. Hull has repeatedly been discriminated against in promotion. In February of 1966 Ms. Hull sought and was denied a job reclassification and salary adjustment. Nevertheless, in The New York Times on June 5, 1966, CFMC publicly advertised for applicants to fill the position of senior merchandising representative, a position for which Ms. Hull was qualified. Defendants did not even consider Plaintiff for this position because of her sex.

13. In November 1967 the position of merchandising manager for dresses became vacant. Ms. Hull applied for this position but was denied it because of her sex. A less experienced male was promoted to this position.

14. In June 1968, Ms. Hull learned that there was again a vacancy in the position of merchandising manager, dresses. Ms. Hull applied again for this position but was denied it because of her sex. A less-experienced male was promoted to the position from within the company.

15. In July 1968, a position in the chain store merchandising department became vacant. Although Ms. Hull had previously requested a transfer to this department she was denied

this request because of her sex and a less experienced male was hired to fill the position.

16. On or about February 3, 1969, the position of merchandise manager, group buying offices, became available. Ms. Hull was qualified for this position, however, a less-experienced male was promoted to the position.

17. At various other times, positions within CFMC became vacant for which plaintiff Hull was qualified. Nevertheless she was not given an opportunity to apply for these openings because of her sex.

18. On or about April 8,1969, plaintiff filed written charges, under oath, with the Equal Employment Opportunity Commission ("EEOC"), alleging denial by Celanese and CFMC of plaintiff's rights under Title VII of the "Civil Rights Act of 1964", 42 U.S.C. §§2000e et seq. These charges were then referred, pursuant to 42 U.S.C. §2000e-5(c), to the New York State Division of Human Rights, which found jurisdiction and probable cause to believe Cela[illegible] and CFMC had engaged in unlawful discriminatory practices.

19. After its finding of jurisdiction and probable cause The New York State Division of Human Rights negotiated a conciliation agreement which is embodied in its order of September

19, 1969, a copy of which is annexed as Exhibit A. Among other things the order provided that Celanese and CFMC were to place Ms. Hull by October 1, 1969 in the job of manager, group buying offices, retail merchandising.

20. Ms. Hull was promoted to manager, group buying offices, October 1, 1969.

21. In June 1971 the position of manager, group buying offices, was eliminated, and Ms. Hull was transferred to a less responsible position as supervisor in home furnishings merchandising.

22. On or about June 23, 1972, the position of supervisor, home furnishings merchandising was eliminated and Ms. Hull was transferred to a still less responsible position of senior merchandising representative, women's apparel merchandising.

23. On or about June 23, 1972 the position of merchandising manager, dresses, became vacant. Although Ms. Hull was qualified for the position, a less-experienced male, with less seniority at CFMC was appointed to the position.

24. On September 19, 1972, plaintiff filed two written charges, under oath with the EEOC alleging denial by Celanese and CFMC of plaintiff's rights under Title VII of the "Civil Rights

Act of 1964," 42 U.S.C. §§2000e et seq. designated respectively TNY 3-0408, TNY3-0409. These charges were then referred to the New York State Division of Human Rights.

25. The Division found jurisdiction and probable cause to believe Celanese and CFMC had engaged in unlawful discriminatory practices as alleged in plaintiff's complaint TNY3-0408 but failed to conciliate the dispute. The EEOC resumed jurisdiction of this complaint on or about January 26, 1973. The Division found no jurisdiction over plaintiff's complaint TNY3-0409 because the complaint was brought in the name of the National Organization for Women and the Division does not process complaints by civil rights organizations. The EEOC resumed jurisdiction of this complaint on or about November 29, 1972.

26. By letters dated July 31, 1973, plaintiff was advised by EEOC that she was entitled to institute a civil action based on her complaints in the appropriate Federal district court within ninety days of receipt of said letters. Copies of the letters are annexed hereto as Exhibits B-1 and B-2.

27. The discrimination in promotion to which Ms. Hull has been subjected is part of a company-wide practice to keep women out of top-level management positions. Women employed by

CFMC are given less frequent promotions than their male counterparts holding the same or comparable positions. In deciding whether to promote its female employees, defendants apply a more stringent standard than they apply to male employees.

28. Females employed at executive positions are usually hired for and confined to specialist and service functions with the result that they are not placed in line positions which provide the traditional route to top management.

29. Defendants prefer to go outside of their ranks to find men to fill top-level positions rather than to promote women who qualify for them. Defendants prefer to leave executive positions open for extended periods, while seeking men to fill them, rather than promote qualified women.

30. With respect to the allegations contained in paragraphs 10 through 29 of this Complaint, plaintiff and the class she represents are qualified for promotion on the same basis as male employees.

SECOND CAUSE OF ACTION

31. Repeat and reallege each and every allegation contained in paragraphs 1 through 29 of this Complaint with

the same force and effect as if set forth at length herein.

32. The defendants' action demoting Ms. Hull and continuing to discriminate against her has been undertaken in retaliation for complaining about Celanese and CFMC's policy and practice of sex discrimination.

THIRD CAUSE OF ACTION

33. Repeat and reallege each and every allegation contained in paragraphs 1 through 29 of this Complaint with the same force and effect as if set forth at length herein.

34. The defendants' action demoting Ms. Hull and continuing to discriminate against her has been undertaken in violation of the agreement between the parties dated September 16, 1969 and embodied in an order of the New York State Division of Human Rights September 19, 1969, a copy of which is annexed as Exhibit A.

FOURTH CAUSE OF ACTION

35. Repeat and reallege each and every allegation contained in paragraphs 1 through 9 of this Complaint with the same force and effect as if set forth at length herein.

36. Defendants have a policy, practice, custom and usage of discriminating against women because of their sex, in recruiting, hiring and firing, and a policy, practice, custom and usage of limiting, segregating or classifying their employees by job classification, which deprives or tends to deprive female employees of employment opportunities because of their sex, in violation of 42 U.S.C. §2000e-2.

37. Defendants recruit only men for positions of responsibility and recuit women primarily for clerical and secretarial positions. CFMC's November 30, 1972 EEO-1 Report, a copy of which is annexed as Exhibit C, shows that although CFMC employs nearly equal numbers of males (122) and females (119), at the management level, 55 are males and 6 are females.

38. When a woman applies for a position at CFMC her sex is noted and she is classified from the outset on that basis. Defendants then evaluate her qualifications by:

(1) judging her primarily against other women applicants, and

(2) requiring her to have qualifications superior to men applicants.

This classification discriminates against women and deprives them of employment opportunities because of their sex.

39. Defendants have adopted a point system of grading jobs to denote levels and salary ranges. Positions usually filled by females are given less points than positions usually filed by males with the result that they entail lower status, lower salary, more limited promotional opportunities and lesser fringe benefits.

40. Defendants have slotted women into certain job titles such as secretaries, typists and most clerical classifications, which have consequently become identified as "female jobs". These positions are of lower rank and responsibility than those open to men having similar qualifications, and they entail lower status, lower salary, more limited promotional opportunities and lesser fringe benefits.

41. Defendants' discriminatory policy of hiring women at lower job titles and lower salaries, and their policy of refusing women equal promotional opportunities, have limited the careers of their female employees and directly deprived women of opportunities to compete equally in the job market. Women employed at CFMC who seek employment elsewhere experience and continue to experience the effect of defendants'

policy and practice of discrimination. They are forced to accept positions and salaries which, while better than those received at CFMC, are still less than they might otherwise obtain had their qualifications been evaluated and recognized in non-discriminatory fashion by defendants.

42. Defendants discriminate against female employees in firing and layoffs. On or about June 23, 1972, defendants decided to make a substantial reduction in personnel. Preference in continued employment was given to male employees because of their sex and a highly disproportionate number of women were discharged.

FIFTH CAUSE OF ACTION

43. Repeat and reallege each and every allegation contained in paragraphs 1 through 9 of this Complaint with the same force and effect as if set forth at length herein.

44. Defendants have engaged in a policy, practice, custom and usage of discriminating against their female employees because of their sex by paying them less and giving them fewer fringe benefits than their male counterparts for performing the same or comparable tasks, in violation of 42 U.S.C. §2000e-2.

45. Male employees are paid the same or more than female employees who have better qualifications and higher-ranking positions. In 1966 Ms. Hull was being paid $4,000 per year less than a male associate with fewer qualifications and fewer responsibilities; in 1968 a male in Ms. Hull's department, employed at her level and with ten years less experience than she, was paid $3,000 more per year.

46. Women are given smaller merit raises than men. When being considered for merit raises, women are judged by more stringent standards than those applied to men.

47. By reason of the foregoing, plaintiff and the class she represents have been damaged in an amount equal to the differences in wages, salaries, and other forms of compensation they would have earned in absence of illegal discrimination against them from (a) the later of their dates of employment or April 8, 1967, to (b) the date upon which judgment is entered in this action or the date they cease to be employed by defendants, whichever is earlier.

48. Defendants provide their employees with a health insurance plan that singles out a characteristic unique to women

(childbearing capacity) and differentiates in insurance coverage on the basis of that characteristic to the disadvantage of women. The basic health insurance plan provides for reimbursement to all employees for all hospital expenses for up to 120 days in a semi-private room, the first $600 of expenses for other hospital services plus 80% of additional hospital services. Pregnancy (including childbirth, miscarriage and abortion) is specifically excepted from this general coverage. It is the only expense for which the health plan provides a maximum allowable benefit. Defendants' health insurance plan does not single out any characteristic unique to men; they do not differentiate and provide less complete medical coverage on the basis of any such unique characteristic.

49. Defendants provide employees with a temporary disability program that pays weekly disability indemnity benefits. By the terms of the policy, male employees are covered for all disabilities. The policy, however, limits benefits to female employees for disability due to pregnancy to $70.00 per week for six weeks. This program singles out a characteristic unique to women and differentiates on the basis of that single characteristic to the detriment of female employees.

50. By reason of the foregoing, plaintiff and the class she represents have been damaged in an amount equal to the difference between the benefits they actually received under said health insurance plan and those they would have received in the absence of illegal discrimination against them from (a) the later of their dates of employment by the defendants or April 8, 1967, to (b) the date upon which judgment is entered in this action or the date they cease to be employed by the defendants, whichever is earlier.

51. Defendants have a policy, practice, custom and usage of discriminating against women because of their sex in providing training opportunities. Qualified female employees are not selected to attend and participate in educational programs which are made available to male employees.

52. Defendants have a policy, practice, custom and usage of discriminating against women because of their sex in providing travel opportunities and other fringe benefits. Female employees are excluded from trade association meetings and conferences as well as from goodwill and client relations functions.

SIXTH CAUSE OF ACTION

53. Repeat and reallege each and every allegation set forth in paragraph 1 through 52 of this Complaint with the same force and effect as if set forth at length herein.

54. Plaintiff Hull has made the violations of law alleged herein known to Defendants. In spite of defendants Brooks and Dragone's overall responsibility for the lawful management of Celanese and CFMC respectively, and in spite of defendants Jordan's, Murphy's and Wiesner's special responsibility for equal employment opportunities by virtue of their membership on Celanese's Committee on Public Responsibility, no remedial action whatever has been taken.

SEVENTH CAUSE OF ACTION

55. Repeat and reallege each and every allegation contained in paragraphs 1 through 54 of this Complaint with the same force and effect as if set forth at length herein.

56. Taken together, the acts set forth in paragraphs 1 through 54 of this Complaint constitute a pattern, practice, custom and usage violative of Title VII of the 1964 Civil Rights Act.

EIGHTH CAUSE OF ACTION

57. Repeat and reallege each and every allegation contained in paragraphs 1 through 56 of this Complaint with the same force and effect as if set forth at length herein.

58. Defendants have engaged in the oppressive course of conduct alleged herein, intentionally, wilfully and with full knowledge that such conduct is in derogation of the law and the rights of the plaintiffs and the members of the class they represent. Plaintiff and the class she represents are, therefore entitled to exemplary damages commensurate with the wrongful acts herein alleged.

WHEREFORE, plaintiff respectfully prays that, with respect to all of such causes of action, this court

1. Enjoin defendants, their agents, successors, employees, attorneys and those acting in concert with them and at their direction from (a) discriminating against the class plaintiff represents and each member thereof with respect to their compensations, terms, conditions or privileges of employment because of their sex, and (b) from continuing or maintaining any policy, practice, custom or

usage of denying, abridging, withholding, conditioning, limiting or otherwise interfering with the rights of the class plaintiff represents and each member thereof to enjoy equal employment opportunities as defined in and secured by Title VII of the Civil Rights Act of 1964.

2. Declare and adjudge that the policies, practices, customs and usages complained of herein violate the provisions of Title VII of the Civil Rights Act of1964.

3. Enter judgment for compensatory damages in an amount to be fixed upon inquest, and based upon (1) the difference between the wages, salaries and other compensation each member of the class actually earned and the wages, salaries and other compensation each member of the class would have earned in the absence of illegal discrimination against her from (a) the later of her date of employment by the defendants or April 8, 1967 to (b) the date upon which judgment is entered in this action or the date she ceases to be employed by defendants, whichever is earlier, and (2) the difference between the benefits she actually received under the health insurance and disability plans defendants provide for employees and those she would have received in the absence of illegal discrimination against her during the same period.

4. Award plaintiff and the members of the class damages by way of example against defendants in an amount commensurate with the wrong incurred.

5. In furtherance of its judgment, enter a decree directing defendants to conform to the terms of a plan of compliance and directing defendants to submit such a plan in form suitable for entry as a decree within 30 days of entry of judgment herein, which plan shall include affirmative measures with goals and timetables insuring compliance with Title VII of the Civil Rights Act of 1964, including:

(a) With respect to the implementation of this program:

(1) establishing an employee committee which will be composed of at least 50% women to oversee the operation and updating of the program;

(2) set up an employee committee composed of at least 50% women to solve employee/employer problems within CFMC;

(3) make career counseling available to female employees.

(b) With respect to recruiting, hiring and firing policies:

(1) classification and processing of applications for employment without regard to sex;

(2) the use of criteria unrelated to sex in evaluating, recruiting and discharging female and male applicants;

(3) classification of positions on a sex-free basis;

(4) the immediate hiring of women for executive and management positions in numbers large enough to overcome the past effects of discrimination;

(c) With respect to wages, salaries and other compensation:

(1) paying the same salaries and wages to women as are paid to men performing the same or comparable tasks;

(2) granting women merit raises of the same amount as are granted to men; and

(3) judging and evaluating women by the same standards as applied to men in considering employees for merit raises;

(d) With respect to promotion:

(1) an immediate promotion of all members of plaintiff's class to the positions which they have been denied by reason of their sex with seniority in such positions

dating from the first instance of wrongful failure to place them therein;

(2) providing equal opportunity and frequency of promotion for women and men holding the same or comparable positions;

(3) applying the same standard for promotions to women and to men;

(4) hiring women for executive and managerial positions to overcome the past effects of discrimination;

(5) promotion of women employed in female-identified positions on the same basis as provided to men with comparable job qualifications; and

(6) post all job openings on company bulletin board so that women and men interested may apply;

(e) With respect to training opportunities programs and all other fringe benefits:

(1) opening all training programs or other training opportunities to women;

(2) providing women equal opportunities to travel, attend conferences and engage in good will and client relations functions;

(f) With respect to insurance and other fringe benefits:

(1) providing employees with an insurance plan that reimburses women for hospital and medical expenses incurred in connection with pregnancy to the same extent that it reimburses all employees for other hospital and medical expenses incurred;

(2) providing for weekly disability indemnity benefits in cases of disability due to pregnancy on the same basis as it provides for such benefits in cases of disability due to other causes;

(g) With respect to defendants' use of assumptions attributed to women as a group, assigning job responsibilities and making job assignments on the basis of an individual's qualifications and abilities, without regard to sex, and without regard to the sex-based preferences of co-workers, supervisors, employers, or the public at large.

6. Allow plaintiff her costs incurred herein, including reasonable attorneys' fees, accounting fees and auditing fees, for the benefit of the class and for the representation of the class as a whole.

7. Grant such other and further relief as may appear to this Court to be just and equitable.

RABINOWITZ, BOUDIN & STANDARD
Attorneys for Plaintiff
Office & P. O. Address
30 East 47th Street,
New York, N. Y. 10017

Dated: New York, New York,
August 24, 1973

EXHIBIT A, ANNEXED TO FOREGOING COMPLAINT

Order After Conciliation

New York State Division of Human Rights

Dated September 19, 1969

**EXHIBIT A**

ORDER AFTER CONCILIATION

Case No. Ib-CFA-228-69: Joan Hull vs. Celanese Corp. d/b/a Celanese Fibers Marketing Company

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

After investigation into the above-entitled complaint, the Division of Human Rights determined that it had jurisdiction in the matter and that there was probable cause to believe that the respondent had engaged or was engaging in the unlawful discriminatory practice complained of.

Thereafter, the respondent and the Division agreed upon terms of conciliation and a copy of the Proposed Conciliation Agreement was served by mail upon the complainant.

As the complainant agreed to the terms of the Proposed Conciliation Agreement on September 16, 1969,

NOW, THEREFORE, it is ordered that the terms of the Proposed Conciliation Agreement are hereby embodied in this Order After Conciliation.

Dated: SEP 19 1969

STATE DIVISION OF HUMAN RIGHTS

By Courtney Brown
Courtney Brown
Regional Manager

To: Miss Joan Hull, complainant
315 East 77 Street
New York, New York

Celanese Corp. d/b/a Celanese
Fibers Marketing Company, respondent
522 Fifth Avenue
New York, New York 10028
Att: Mr. B. H. Sands
Director, Civil Rights Administration

**EXHIBIT A**

PROBABLE CAUSE FOUND
PROPOSED CONCILIATION AGREEMENT
Case No. CSE-18417-69 Joan Hull vs. Celanese Fibers Marketing Company, Division of Celanese Corporation

---

On May 13, 1969 Joan Hull who is a female, filed a verified complaint with the State Division of Human Rights charging the above-named respondents with an unlawful discriminatory practice relating to employment by denying her equal terms, conditions and privileges of her employment because of her sex, in violation of the Human Rights Law of the State of New York

After investigation, the Division of Human Rights has documented that it has jurisdiction in this matter and that there is probable cause to believe that the respondents have engaged or is engaging in the unlawful discriminatory practices complained of.

The respondents and the Division have agreed upon terms of conciliation and the Proposed Conciliation Agreement is as follows:

1. That the respondents shall refrain from the commission of unlawful discriminatory practices in the future.

2. That a conference be arranged between executive management and complainant to discuss upper mobility and not lateral movement within respondent firm.

3. That respondents are to ~~offer~~ place complainant, by October 1, 1969, in the job of manager, group buying offices, in the retail merchandising function of the respondents.

4. That a review of personnel procedures shall be conducted in one year.

**EXHIBIT A**

STATE DIVISION OF HUMAN RIGHTS

BY _____
Regional Manager

By Robert L. Stultz, Jr. 8/22/69
Respondent

V. P. Apparel &
Retail Marketing - CFMC
Title of Office

By A J Brockman, Jr 8/22/69
Respondent

Administration Manager, Civil Rights Administration
Title of Office

By W. A. Klark - 8-22-69
Respondent

Personnel Director, CFMC
Title of Office

MDS I agree to the terms

☐ I object to the agreement because

Carl Hull
Complainant's Signature

Sept 16, 1969
DATE

EXHIBIT B-1, ANNEXED TO FOREGOING COMPLAINT

Equal Employment Opportunity Commission

Notice of Right to Sue - Ms. Joan Hull

Dated July 31, 1973

EXHIBIT B-1

EQUAL E. . LOYMENT OPPORTUNITY COMM'SSION

NOTICE OF RIGHT TO SUE JUL 31 1973

| TO: | FROM: |
|---|---|
| National Organization for Women<br>c/o Ms. Joan Hull<br>315 East 77th Street<br>New York, New York 10021 | Equal Employment Opportunity Comm.<br>New York District Office<br>26 Federal Plaza, Room 4000<br>New York, New York 10007 |

THIS CHARGE HAS BEEN DISMISSED FOR THE FOLLOWING REASON:

- ☐ NO REASONABLE CAUSE
- ☒ UNTIMELY CHARGE
- ☐ NO JURISDICTION
- ☐ FAILURE TO PROCEED

EEOC REPRESENTATIVE: Ralph Munoz, District Counsel

| TELEPHONE NUMBER | CASE/CHARGE NUMBER |
|---|---|
| 264-3840 | TNY 3-0409 |

If you want to pursue your charge further, you have the right to sue the respondent(s) named in this case in the United States District Court for the area where you live. If you decide to sue, you must do so within ninety (90) days from the receipt of this Notice; otherwise your right is lost.

If you do not have a lawyer or are unable to obtain the services of a lawyer, take this Notice to the United States District Court which may, in its discretion, appoint a lawyer to represent you.

An information copy of this Notice has been sent to the respondent(s) named in this case.

If you have any questions about your legal rights or need help in filing your case in court, call the EEOC representative named above.

for Ralph Munoz
District Director

cc:

Celanese Fibers Marketing Company
Division of Celanese Corp.
522 Fifth Avenue
New York, New York 10036



EEOC FORM APR 73 161

EXHIBIT B-2, ANNEXED TO FOREGOING COMPLAINT

Equal Employment Opportunity Commission

Notice of Right to Sue - Ms. Joan Hull

Dated July 31, 1973

EXHIBIT B-2

# EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## NOTICE OF RIGHT TO SUE JUL 31 1973

| TO: | FROM: |
|---|---|
| Ms. Joan Hull<br>315 East 77th Street<br>New York, New York 10021 | Equal Employment Opportunity Comm.<br>New York District Office<br>26 Federal Plaza, Room 4000<br>New York, New York 10007 |

| THIS CHARGE HAS BEEN DISMISSED FOR THE FOLLOWING REASON: | EEOC REPRESENTATIVE | |
|---|---|---|
| ☐ NO REASONABLE CAUSE ☐ UNTIMELY CHARGE<br>☐ NO JURISDICTION ☐ FAILURE TO PROCEED | Ralph Munoz, District Counsel | |
| | TELEPHONE NUMBER<br>264-3840 | CASE/CHARGE NUMBER<br>TNY 3-0408 |

If you want to pursue your charge further, you have the right to sue the respondent(s) named in this case in the United States District Court for the area where you live. If **you decide to sue, you must do so within ninety (90) days from the receipt of this Notice; otherwise your right is lost.**

If you do not have a lawyer or are unable to obtain the services of a lawyer, take this Notice to the United States District Court which may, in its discretion, appoint a lawyer to represent you.

An information copy of this Notice has been sent to the respondent(s) named in this case.

If you have any questions about your legal rights or need help in filing your case in court, call the EEOC representative named above.

for Ralph Munoz
District Director

cc:

Celanese Fibers Marketing Company
Division of Celanese Corp.
522 Fifth Avenue
New York, New York 10036



EEOC FORM APR 73 161

EXHIBIT C, ANNEXED TO FOREGOING COMPLAINT

Celanese Fibers Marketing Company's

November 30, 1972 EEO-1 Report

**EXHIBIT C**

CFMC - NEW YORK
EEO-1 - Exhibit

As Of 11/30/72

MALE EMPLOYEES

| OCCUPATIONS | Total Males | Caucasian | Negro | Oriental | Spanish |
|---|---|---|---|---|---|
| Officials and Managers | 55 | 54 | - | - | 1 |
| Professional | 28 | 20 | 4 | - | 4 |
| Technicians | - | - | - | - | - |
| Sales Workers | 29 | 28 | - | - | 1 |
| Office & Clerical | 6 | 4 | 1 | - | 1 |
| Operatives Semiskilled | 4 | 1 | 1 | - | 2 |
| TOTAL | 122 | 107 | 6 | 0 | 9 |

EXHIBIT C

| | FEMALE EMPLOYEES | | | | |
|---|---|---|---|---|---|
| OCCUPATIONS | Total Females | Caucasian | Negro | Oriental | Spanish |
| Officials and Managers | 6 | 6 | - | - | - |
| Professional | 25 | 21 | 2 | - | 2 |
| Technicians | - | - | - | - | - |
| Sales Workers | 1 | - | - | - | 1 |
| Office & Clerical | 87 | 61 | 7 | 2 | 17 |
| Operatives Semiskilled | - | - | - | - | - |
| TOTAL | 119 | 88 | 9 | 2 | 20 |

**ANSWER**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| JOAN HULL, on behalf of herself and others similarly situated, Plaintiffs, -against- CELANESE CORPORATION; CELANESE FIBERS MARKETING CO.; JOHN W. BROOKS, VERNON E. JORDAN, GRAYSON M-P. MURPHY and DR. JEROME B. WIESNER, officers and directors of CELANESE CORPORATION; and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO., Defendants. | Index No. 73 Civ. 3725 ANSWER |

Defendants, by their Attorneys Rosenman Colin Kaye Petschek Freund & Emil, answering the complaint herein:

1. Deny each and every allegation of paragraph 1 of the complaint except admit that plaintiff has brought this action and seeks certain relief.

2. Deny each and every allegation of paragraph 2 of the complaint except admit that plaintiff purports to invoke the jurisdiction of the Court pursuant to the statutes set forth therein.

3. Deny each and every allegation of paragraph 3 of the complaint except admit that plaintiff has instituted this action on her own behalf and has designated this case

as a class action in purported reliance on Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

4. Deny each and every allegation of paragraphs 4 and 4(a), (b), (c), (d) and (e) of the complaint except admit that plaintiff is a female employed by Celanese Fibers Marketing Company ("CFMC").

5. Deny each and every allegation of paragraph 9 of the complaint.

6. Answering the allegations of paragraph 10 of the complaint, repeat and reallege each and every allegation of paragraphs 1 through 5 hereof.

7. Deny each and every allegation of paragraph 11 of the complaint.

8. Deny each and every allegation of paragraph 12 of the complaint except admit that CFMC caused an advertisement to be published in The New York Times on or about June 5, 1966 and refer to the said advertisement for the content thereof.

9. Deny each and every allegation of paragraph 13 of the complaint except admit that in or about November 1967 the position of merchandising manager, dresses was filled by a person other than plaintiff.

10. Deny knowledge or information sufficient to form a belief with respect to the allegations of the first sentence of paragraph 14 of the complaint, and deny each and every other allegation of the said paragraph except admit that in or about June 1968 the position of merchandise manager, dresses was again filled by a person other than plaintiff.

11. Deny each and every allegation of paragraph 15 of the complaint except admit that in or about July 1968 a position in the chain merchandising department was filled by a person other than plaintiff.

12. Deny each and every allegation of paragraph 16 of the complaint except admit that in or about February 1969 the position of merchandise manager, group buying offices was filled by a person other than plaintiff.

13. Deny each and every allegation of paragraph 17 of the complaint.

14. Deny knowledge or information sufficient to form a belief with respect to the allegations of paragraph 18 of the complaint except admit that in or about May 1969 plaintiff filed a complaint against CFMC with the New York State Division of Human Rights and that, in conjunction with a settlement of the dispute, the said Division made a finding that it had jurisdiction and that there was probable cause

to believe that CFMC had engaged in a discriminatory practice, but aver that no finding was made that CFMC or any other defendant herein had actually engaged in any unlawful discriminatory practice.

15. Deny each and every allegation of paragraph 19 of the complaint except admit that on or about September 16, 1969, defendant CFMC entered into a conciliation agreement in settlement of a complaint made by plaintiff to the New York State Division of Human Rights, which agreement was embodied in an order of the said Division, and refer to the agreement and order for the terms and conditions thereof.

16. Deny each and every allegation of paragraph 21 of the complaint except admit that in or about June 1971 the position of manager, group buying offices, was eliminated and that thereafter plaintiff became supervisor, home furnishings merchandising.

17. Deny each and every allegation of paragraph 22 of the complaint except admit that in or about June 1972 the position of supervisor, home furnishings merchandising, was eliminated and that thereafter plaintiff became senior merchandising representative, women's apparel merchandising.

18. Deny each and every allegation of paragraph 23 of the complaint except admit that in or about June 1972 the position of merchandising manager, dresses was filled by a person other than plaintiff.

19. Deny knowledge or information sufficient to form a belief with respect to the allegations of paragraph 24 of the complaint.

20. Deny knowledge and information sufficient to form a belief with respect to the allegations of paragraph 25 of the complaint except admit that with regard to a complaint by plaintiff, the Division made a finding that it had jurisdiction and that there was probable cause to believe that CFMC had engaged in a discriminatory practice, aver that the dispute was not conciliated because plaintiff refused to agree to a settlement proposed by the Division and further aver that no finding was made that CFMC or any other defendant herein had actually engaged in any unlawful practice.

21. Deny knowledge or information sufficient to form a belief with respect to the allegations of paragraph 26 of the complaint.

22. Deny each and every allegation of paragraphs 27, 28 and 29 of the complaint.

23. Deny each and every allegation of paragraph 30 of the complaint except aver that the standards for promotion for male and female employees of CFMC are the same.

24. Answering the allegations of paragraph 31 of the complaint, repeat and reallege each and every allegation of paragraphs 1 through 22 hereof.

25. Deny each and every allegation of paragraph 32 of the complaint.

26. Answering the allegations of paragraph 33 of the complaint, repeat and reallege each and every allegation of paragraphs 1 through 22 hereof.

27. Deny each and every allegation of paragraph 34 of the complaint except admit the existence of the agreement and order referred to therein.

28. Answering the allegations of paragraph 35 of the complaint, repeat and reallege each and every allegation of paragraphs 1 through 5 hereof.

29. Deny each and every allegation of paragraph 36 of the complaint.

30. Deny each and every allegation of paragraph 37 of the complaint except admit that the document referred to therein was prepared by CFMC and refer to the said document for the content thereof.

31. Deny each and every allegation of paragraph 38 of the complaint.

32. Deny each and every allegation of paragraph 39 of the complaint except admit that CFMC uses a point system with respect to certain jobs.

33. Deny each and every allegation of paragraphs 40 and 41 of the complaint.

34. Deny each and every allegation of paragraph 42 of the complaint except admit that in or about June 1972 defendants Celanese and CFMC decided to make a substantial reduction in personnel.

35. Answering the allegations of paragraph 43 of the complaint, repeat and reallege each and every allegation of paragraphs 1 through 5 hereof.

36. Deny each and every allegation of paragraph 44 of the complaint.

37. Deny each and every allegation of the first sentence of paragraph 45 of the complaint and deny knowledge or information sufficient to form a belief with respect to the allegations of the second sentence thereof.

38. Deny each and every allegation of paragraphs 46 and 47 of the complaint.

39. Deny each and every allegation of paragraph 48 of the complaint except admit that defendant CFMC provides a

health insurance plan to its employees and refer to the said plan for the content thereof.

40. Deny each and every allegation of paragraph 49 of the complaint except admit that defendant CFMC provides employees with a temporary disability program and refer to the said program for the content thereof.

41. Deny each and every allegation of paragraphs 50, 51 and 52 of the complaint.

42. Answering the allegations of paragraph 53 of the complaint, repeat each and every allegation of paragraphs 1 through 41 hereof.

43. Deny each and every allegation of paragraph 54 of the complaint.

44. Answering the allegations of paragraph 55 of the complaint, repeat and reallege each and every allegation of paragraphs 1 through 43 hereof.

45. Deny each and every allegation of paragraph 56 of the complaint.

46. Answering the allegations of paragraph 57 of the complaint, repeat and reallege each and every allegation of paragraphs 1 through 45 hereof.

47. Deny each and every allegation of paragraph 58 of the complaint.

AS A FIRST DEFENSE

48. At various times since June 1971 CFMC offered plaintiff promotions and a transfer, which plaintiff refused. CFMC also offered to provide plaintiff with a training program designed to overcome deficiencies in plaintiff's managerial and executive skills. Plaintiff refused to avail herself of such an opportunity.

49. Plaintiff's claim is barred by the doctrines of equitable estoppel and unclean hands.

AS A SECOND DEFENSE

50. The complaint fails to state a claim against the defendants John W. Brooks, Vernon E. Jordan, Grayson M-P. Murphy, Dr. Jerome B. Wiesner and Allan R. Dragone upon which relief can be granted.

AS A THIRD DEFENSE

51. Upon information and belief, plaintiff has filed no charge with the Equal Employment Opportunity Commission alleging that the defendants John W. Brooks, Vernon E. Jordan, Grayson M-P. Murphy, Dr. Jerome B. Wiesner, Allan R. Dragone, or any of them, engaged in an unlawful employment practice.

52. Upon information and belief, no "Notice of Right to Sue" the aforementioned individual defendants was issued to plaintiff by the said Commission.

53. Pursuant to the provisions of 42 U.S.C. §2000e-5, the Court has no jurisdiction over the subject matter of any claim against the said defendants.

AS A FOURTH DEFENSE

54. Plaintiff's "Sixth Cause of Action" fails to state a claim upon which relief can be granted.

AS A FIFTH DEFENSE

55. Upon information and belief, plaintiff has filed no charge with the Equal Employment Opportunity Commission with respect to the subject matter of the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth causes of action.

56. Upon information and belief, no "Notice of Right to Sue" with respect to the said subject matter was issued to plaintiff by the said Commission.

57. Pursuant to the provisions of 42 U.S.C. §2000e-5, the Court has no jurisdiction over the subject matter of the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth

causes of action.

AS A SIXTH DEFENSE

58. Plaintiff's claims are barred in whole or in part by the applicable statute of limitations.

AS A SEVENTH DEFENSE

59. Plaintiff's claims are barred in whole or in part by laches.

WHEREFORE, defendants demand judgment dismissing the complaint, together with the costs and disbursements of this action.

ROSENMAN COLIN KAYE PETSCHEK
FREUND & EMIL

By _____
A Member of the Firm
Attorneys for Defendants
575 Madison Avenue
New York, New York 10022

Dated: New York, New York
October 2, 1973

# NOTICE OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| JOAN HULL, on behalf of herself and others similarly situated, Plaintiffs, -against- CELANESE CORPORATION; CELANESE FIBERS MARKETING CO.; JOHN W. BROOKS, VERNON E. JORDAN, GRAYSON M.P. MURPHY and DR. JEROME B. WIESNER, Officers and Directors of Celanese Corporation and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO., Defendants. | NOTICE OF MOTION<br>73 CIV. 3725 |

TO: Gilbert S. Edelson, Esq.
Rosenman Colin Kaye Petschek
Freund & Emil
575 Madison Avenue
New York, New York 10022

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavits of Victor Rabinowitz, Donata Delulio, Rosanne DiDio, Mary Swet, Marilyn Karnes and Jacquelyn Keely and the proposed amended complaint, attorneys for plaintiff and applicants for intervention will move this Court in Room 519 of the United States Courthouse, Foley Square, New York, New York, on March 29, 1974,

at 2:15 P.M., or as soon thereafter as counsel may be heard, for the following:

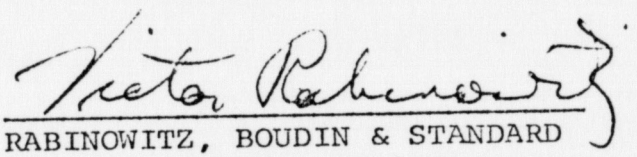
(1) for an order permitting the plaintiff to file her proposed amended complaint, a copy of which is annexed hereto and herewith served upon you;

(2) for an order that the action brought as a class action shall be so maintained on the ground that it is a proper class action on all issues as appears more fully from the allegations of the amended complaint and the affidavits submitted herewith;

(3) for leave to intervene pursuant to Rules 23 and 24 of the Federal Rules of Civil Procedure, by Donata Delulio, Rosanne DiDio, Mary Swet, Marilyn Karnes, and Jacquelyn Keely, as co-plaintiffs in this on the grounds that the applicants for intervention are members of the class and that the claims of the applicants and the main action have questions of law and fact in common in that all have been subjected to discrimination in employment on the basis

of sex by defendants in violation of Title VII of the "Civil Rights Act of 1964," 42 USC 2000e, et seq.

Respectfully submitted,



RABINOWITZ, BOUDIN & STANDARD
Attorneys for Plaintiffs
30 East 42nd Street
New York, New York 10017
(212) OX 7-8640

Dated: New York, New York
March 13, 1974

# AFFIDAVIT OF VICTOR RABINOWITZ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| JOAN HULL, on behalf of herself and others similarly situated, Plaintiffs, -against- CELANESE CORPORATION; CELANESE FIBERS MARKETING CO.; JOHN W. BROOKS; VERNON E. JORDAN, GRAYSON M-P. MURPHY and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO., Defendants. | 73 Civ. 3725<br>AFFIDAVIT |

STATE OF NEW YORK )
: ss.:
COUNTY OF NEW YORK )

VICTOR RABINOWITZ, being duly sworn, deposes and says:

I am a member of the firm of Rabinowitz, Boudin & Standard, attorneys for plaintiff and proposed intervenors, and I make this affidavit in support of plaintiff's motion for leave to amend the complaint, and for determination that this action proceed as a class action, and the motion by the proposed intervenors for leave to intervene.

## Affidavit of Victor Rabinowitz

A. Amendment

Defendant Celanese Corporation (referred to herein as "Celanese") is a Delaware corporation with its corporate headquarters located in New York City. Celanese carries on its business activities through several non-corporate divisions, two of which, Celanese Fibers Marketing Company (referred to herein as "CFMC") and Celanese Chemical Company (referred to herein as "Chemical") are located at 1211 Avenue of the Americas in the "Celanese Building" together with the Celanese corporate staff.

This class action was commenced by Joan Hull, a female employee of Celanese in its operating division CFMC.

The class was initially described as all female employees in CFMC and applicants for such employment during a stated period of time. After plaintiff's complaint was filed, Donata Delulio, an employee on the Celanese corporate staff, and Rosanne DiDio, a Celanese employee in Chemical, came forward with further complaints of sex discrimination.

When it became apparent that the discriminatory policies to which Ms. Hull had been subjected were not confined to one division of the corporation but permeated its employment policies, at least throughout its New York offices,

other women who had been affected by defendant's discrimination sought to join in redressing their grievances and they now propose to expand the class to include all female applicants and employees of Celanese in New York City and to join in this action as named plaintiffs.

The proposed expansion and addition of plaintiffs does not alter the basic factual and legal issues now before this Court. It more fully describes the injured class and as a result will permit this Court to resolve efficiently and comprehensively the issues raised by this complaint and to protect fully the aggrieved class.

B. Class Action

As demonstrated in the brief in support of its motions submitted herewith, this action meets all the requisites of a class action. The class is sufficiently numerous to make joinder impracticable. The letter of Gilbert Edelson, annexed hereto as Exhibit A states that from January 1, 1966 to December 31, 1973, there were 533 female employees at CFMC. The class will be significantly larger than this because it will also include some as yet undetermined number of female applicants for employment. If the proposed class is expanded, female

applicants and employees of Celanese Corporation generally will be included. The affidavits of Donata Delulio and Rosanne DiDio reveal that over 150 females are now employed on the Celanese corporate staff and that approximately 75 females are now employed at Chemical. The class would be expanded still more because both applicants and past employees would be included. Thus there are in excess of 750 class members under the class definition as amended.

Plaintiff's counsel is fully competent to litigate this class action and protect the interests of the class. We are experienced in federal litigation and have litigated matters such as this in the past; we are presently actively litigating the following class actions:

Fortune Society, et al. v. Rockefeller, et al., (SDNY 71 Civ. 5410);

Weinmann, et al. v. Local 40, International Association of Bridge, Structural & Ornamental Ironworkers Union (SDNY 72 Civ. 3297);

Barninger, et al. v. National Maritime Union, et al. (SDNY 72 Civ. 1949);

Women in City Government United, et al. v. City of New York, et al. (SDNY 74 Civ. 304);

Socialist Workers Party, et al. v. Attorney General, et al. (SDNY 73 Civ. 3160).

C. Intervention

Annexed hereto as Exhibits B & C are copies of complaints filed by plaintiff Hull with the EEOC on or about September 19, 1972. Complaint TNY 3-0408 was specifically addressed to the issue of defendant's discriminatory denial of a promotion to plaintiff. Complaint TNY 3-0409 was brought in the name of the National Organization for Women seeking class relief against CFMC for its "pattern and practice of hiring recruiting, laying off, discharging, classifying, assigning, training, transferring promoting, allocating employee benefits and wages," all of which operated to deny female employees "the same terms, conditions, privileges and compensation of employment as male employees."

By letters dated July 31, 1972, plaintiff Hull was informed by the EEOC of her right to commence an action on the bases of these complaints (See Exhibits B1 and B2 to plaintiff's complaint.) Plaintiff Hull commenced the instant class action in August 27, 1973. The complaint attacks a broad range of defendants' discriminatory practices, paralleling the issues of her EEOC charge TNY 3-0409:

The first cause of action alleges discrimination in promotions;

the second cause of action alleges that Hull was demoted in retaliation for filing her complaints;

the third cause of action alleges that defendants violated the conciliation agreement;

the fourth cause of action alleges discrimination in recruiting, hiring, firing and job classification;

the fifth cause of action alleges discrimination in salaries, raises and fringe benefits.

The affidavits of the intervenors show that their participation in the action will sharpen the factual issues raised by the complaint's allegations. The proposed amended complaint integrates the intervenors' particular grievances into the format of the initial complaint. Mss. Delulio, DiDio, Keely and Karnes join to complain of discriminatory denials of promotions and transfers in the first cause of action. In the second cause of action, Mss. Karnes, Keely and Delulio join in alleging reprisals and harassment as the result of their complaints of sex discrimination. In the fourth cause of action Mss. Delulio and DiDio allege discrimination in hiring; Ms. Keely alleges a discriminatory discharge; all allege discrimination in job classification. In the fifth cause of action, Mss. DiDio, Delulio and Karnes describe the

discrimination they have suffered regarding the salaries; Ms. Swet complains of discrimination with respect to fringe benefits particularly discriminatory health, hospitalization and disability benefits.

Thus it is clear that these interventions present the various issues of defendant's discriminatory employment policies and practices already alleged in Ms. Hull's initial complaint in the concrete factual settings in which the intervenors have experienced them. The proposed interventions thus place issues of discrimination in the action in a fully developed factual framework within which full consideration and resolution of the legal issues may be accomplished, and complete relief can be afforded.

Victor Rabinowitz

VICTOR RABINOWITZ

Sworn to before me this
12th day of March, 1974.

Herbert Jordan

HERBERT JORDAN
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-[illegible]133 Qual. in N. Y. County
[illegible] Expires March 30, 1975

EXHIBIT A, ANNEXED TO FOREGOING AFFIDAVIT

Letter to K. Randlett Walster
from Gilbert S. Edelson, February 11, 1974

EXHIBIT OMITTED

EXHIBIT B, ANNEXED TO FOREGOING AFFIDAVIT

Joan Hull - Charge of Employment Discrimination
to Equal Employment Opportunity Commission
Case File No. TNY 3-0408

EXHIBIT OMITTED

EXHIBIT C, ANNEXED TO FOREGOING AFFIDAVIT

Joan Hull (for the National Organization of
Women) - Charge of Employment Discrimination
to Equal Employment Opportunity Commission
Case File No. TNY 3-409

EXHIBIT OMITTED

## PROPOSED AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| JOAN HULL, DONATA DELULIO, ROSANNE DiDIO, MARY SWET, MARILYN KARNES and JACQUELYN KEELY, on behalf of themselves and others similarly situated, | |
| Plaintiffs, | Index No. 73 CIV. 3725 |
| -against- | |
| CELANESE CORPORATION; JOHN W. BROOKS, VERNON E. JORDAN, GRAYSON M.P. MURPHY and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION, | PROPOSED AMENDED COMPLAINT |
| Defendants. | |

Plaintiffs, for their complaint allege:

### I. INTRODUCTION

1. Plaintiffs have brought this action against the defendants named above to secure their civil rights to equal opportunities without regard to sex. They seek redress for past violations of those rights and the prevention of future violations for themselves and all other women similarly situated.

### II. JURISDICTION

2. Jurisdiction of this Court is invoked pursuant to 42 U.S.C. §2000e-5(f)(3). This is a suit in equity auth-

orized by and instituted pursuant to Title VII of the Act of Congress known as "The Civil Rights Act of 1964," 42 U.S.C. §§ 2000e et seq.

III. CLASS ACTION ALLEGATIONS

3. Plaintiffs bring this action as a class action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

4. The class that plaintiffs represent is composed of all female citizens and residents of the United States who were, are now or will be employed in New York City by Celanese Corporation or any of its divisions, at any time from April 8, 1967 to the date on which this action is finally terminated, and all women who have applied for positions in New York City with Celanese Corporation or any of its divisions at any time from April 8, 1967, to the date on which this action is finally terminated. The names and addresses of all the members of the class can be obtained readily from the defendant's files.

(a) The class consisting of over 100 women is so numerous that joinder of all members is impracticable;

(b) Plaintiffs' claims and interests do not conflict with the interests of any other class members. Upon information and belief, no other member of the class has in-

stituted a similar action on her own behalf;

(c) The interests of said class are adequately and fairly represented by plaintiffs. Plaintiffs are females employed at Celanese Corporation in New York City who have been subjected to discrimination in employment on the basis of their sex;

(d) Common questions of law and fact exist affecting the rights of all of the members of the class. The practices of the defendants complained of herein have been and are directed uniformly and routinely to all members of the class, and have deprived each member of the class of equal employment opportunities;

(e) Defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief and declaratory relief with respect to the class as a whole.

5. Plaintiff Joan Hull is a female citizen of the United States, residing in the City and State of New York. Since July 1, 1963 she has been continuously employed in New York City by defendant Celanese Corporation at its operating division, Celanese Fibers Marketing Company (hereinafter referred to as "CFMC").

6. Plaintiff Donata Delulio is a female citizen of the United States, residing in the City and State of New York. She has been continuously employed in New York City by Celanese Corporation since July 1972.

7. Plaintiff Rosanne DiDio is a female citizen of the United States residing in the State of New York. Since July 23, 1973 she has been continuously employed in New York City by defendant Celanese Corporation at its operating division, Celanese Chemical Company.

8. Plaintiff Mary Swet is a female citizen of the United States residing in the City and State of New York. Since May 22, 1972 she has been continuously employed in New York City by defendant Celanese Corporation, at its operating division, CFMC.

9.-10. Plaintiff Marilyn Karnes is a female citizen of the United States residing in the City and State of New York. Since October 1, 1970 she has been continuously employed in New York City by defendant Celanese Corporation at its operating division, CFMC.

11. Plaintiff Jacquelyn Keely is a female citizen of the United States residing in the City and State of New York. She was employed in New York City by defendant Celanese Corporation at its operating division CFMC from December 1963 through June 1972.

12. Defendant, Celanese Corporation ("Celanese") is a corporation incorporated in the State of Delaware. Its principal office is now located at 1211 Avenue of the Americas, New York, New York. Celanese is an employer within the meaning of 42 U.S.C. § 2000e-(b) in that it is engaged in an industry affecting commerce and employs more than 25 persons. Celanese carries on its business activities through several non-corporate operating divisions, two of which, Celanese Fibers Marketing Company and Celanese Chemical Company, are located in New York City with their principal offices at Celanese corporate headquarters, 1211 Avenue of the Americas, New York, New York.

13. John W. Brooks is the Chairman and Chief Executive officer of Celanese; Dr. Jerome B. Wiesner is a director of Celanese and Chairman of its Public Responsibility Committee; Vernon E. Jordan and Grayson M.P. Murphy are directors of Celanese and members of its Public Responsibility Committee.

## V. NO REMEDY AT LAW

14. With respect to each cause of action set forth in this complaint, plaintiffs and th. class they represent have no plain, adequate or complete remedy at law to redress the wrongs alleged herein. This action, seeking declaratory

and injunctive relief, and an accounting to redress past wrongs, is the only means of securing adequate or complete relief to plaintiffs and the class. Unless defendants are enjoined, plaintiffs and the class they represent and each member thereof will continue to suffer irreparable injury from defendants' policies, practices, customs and usages set forth herein.

FIRST CAUSE OF ACTION

15. Repeat and reallege each and every allegation contained in paragraphs 1 through 14 of this Complaint with the same force and effect as if set forth at length herein.

16. Defendants have a policy, practice, custom and usage of discriminating against female employees in promotions and transfers because of their sex, and a policy, practice, custom and usage of limiting, segregating or classifying employees which deprives or tends to deprive female employees of employment opportunities through promotions and transfers because of their sex, in violation of 42 U.S.C. § 2000e-2. In furtherance of this policy, defendants have taken the following particular action.

A. Plaintiff Hull

17. Ms. Hull has repeatedly been discriminated against in promotion. In February of 1966 she sought and

was denied a job reclassification and salary adjustment. Nevertheless, in The New York Times on June 5, 1966, defendant Celanese, through CFMC, publicly advertised for applicants to fill the position of senior merchandising representative, a position for which Ms. Hull was qualified. Defendants did not consider said plaintiff for this position because of her sex.

18. In November 1967 the position of merchandising manager for dresses became vacant. Ms.Hull applied for this position but was denied it because of her sex. A less experienced male was promoted to this position.

19. In June 1968, Ms. Hull learned that there was again a vacancy in the position of merchandising manager, dresses. Ms. Hull applied again for this position but was denied it because of her sex. A less-experienced male was promoted to the position from within the company.

20. In July 1968, a position in the chain store merchandising department became vacant. Although Ms. Hull had previously requested a transfer to this department she was denied this request because of her sex and a less experienced male was hired to fill the position.

21. On or about February 3, 1969, the position of merchandise manager, group buying offices, became available. Ms. Hull was qualified for this position, however, a less-experienced male was promoted to the position.

22. At various other times, positions within CFMC became vacant for which plaintiff Hull was qualified. Nevertheless she was not given an opportunity to apply for these openings because of her sex.

23. On or about April 8, 1969, plaintiff filed written charges, under oath, with the Equal Employment Opportunity Commission ("EEOC"), alleging denial by Celanese and CFMC of plaintiff's rights under Title VII of the "Civil Rights Act of 1964," 42 U.S.C. §§ 2000e et seq. These charges were then referred, pursuant to 42 U.S.C. § 2000e-5(c), to the New York State Division of Human Rights, which found jurisdiction and probable cause to believe Celanese and CFMC had engaged in unlawful discriminatory practices.

24. After its finding of jurisdiction and probable cause The New York State Division of Human Rights negotiated a conciliation agreement which is embodied in its order of September 19, 1969, a copy of which is annexed as Exhibit A. Among other things the order provided that Celanese and CFMC were to place Ms. Hull by October 1, 1969 in the job of mana-

ger, group buying offices, retail merchandising.

25. Ms. Hull was promoted to manager, group buying offices, October 1, 1969.

26. In June 1971 the position of manager, group buying offices, was eliminated, and Ms. Hull was transferred to a less responsible position as supervisor in home furnishings merchandising.

27. On or about June 23, 1972, the position of supervisor, home furnishings merchandising was eliminated and Ms. Hull was transferred to a still less responsible position of senior merchandising representative, women's apparel merchandising.

28. On or about June 23, 1972 the position of merchandising manager, dresses, became vacant. Although Ms. Hull was qualified for the position, a less-experienced male, with less seniority at CFMC was appointed to the position.

29. On September 19, 1972, plaintiff filed two written charges, under oath with the EEOC alleging denial by Celanese and CFMC of plaintiff's rights under Title VII of the "Civil Rights Act of 1964," 42 U.S.C. §§ 2000e et seq. designated respectively TNY 3-0408, TNY 3-0409. These charges were then referred to the New York State Division of Human Rights.

30. The Division found jurisdiction and probable cause to believe Celanese and CFMC had engaged in unlawful discriminatory practices as alleged in plaintiff's complaint TNY 3-0408 but failed to conciliate the dispute. The EEOC resumed jurisdiction of this complaint on or about January 26, 1973. The Division found no jurisdiction over plaintiff's complaint TNY 3-0409 because the complaint was brought in the name of the National Organization for Women and the Division does not process complaints by civil rights organizations. The EEOC resumed jurisdiction of this complaint on or about November 29, 1972.

31. By letters dated July 31, 1973, plaintiff was advised by EEOC that she was entitled to institute a civil action based on her complaints in the appropriate Federal district court within ninety days of receipt of said letters. Copies of the letters are annexed hereto as Exhibits B-1 and B-2.

B. Plaintiff Delulio

32. In July of 1972, plaintiff Delulio commenced her employment with defendant Celanese as an attorney. At that time she was told that she would be permanently assigned to work on legal matters relating to CFMC. Nevertheless, when

an appropriate position became available in February 1973, she was not transferred into that opening. Instead this position was filled on an interim basis with temporarily hired outside attorneys.

33. In May of 1973, another vacancy occurred in the legal group working on CFMC matters. However, again plaintiff Delulio was not transferred to the vacancy. Instead, the position was offered to a male attorney with less experience than plaintiff Delulio.

C. Plaintiff DiDio

34. Plaintiff DeDio was hired by defendant Celanese in July of 1973. As a marketing trainee, she was told that she would be transferred to a sales or marketing position as soon as one became available. Plaintiff DiDio has learned that such marketing and sales positions have become available. However, they have been filled by males and she has not been given any opportunity to apply or be considered for such position.

D. Plaintiff Keely

35. Plaintiff Keely was employed by Celanese from December 1963 through June 1972. During the period of time

during which she was employed as a Merchandising Representative, two males with less related work experience and fewer qualifications were promoted to managerial positions. Plaintiff Keely was not given an opportunity to apply for these managerial positions nor was she considered for them.

E. Plaintiff Karnes

36. Plaintiff Karnes has been a Celanese employee since October 1, 1970. In December of 1971 she submitted a written request to understudy the position immediately superior to her own. However, she received no response to her request.

37. In December of 1972, plaintiff Karnes requested a job reclassification which would reflect the fact that she had assumed additional duties and responsibilities in connection with her employment as Manager of Fabric Creative Services Apparel. This request was summarily denied.

38. In March and April 1973, plaintiff Karnes again requested a job review and a year end assessment for the purpose of obtaining a job reclassification and salary increase. However, no new job description was provided and plaintiff was not given an increase in salary.

39. The discrimination in promotion to which plaintiffs have been subjected is part of a company-wide practice

to keep women out of top-level management positions. Women employed by Celanese are given less frequent promotions than their male counterparts. In deciding whether to promote female employees, defendants apply a more stringent standard than they apply to male employees.

SECOND CAUSE OF ACTION

40. Repeat and reallege each and every allegation contained in Paragraphs 1 through 39 of this Complaint with the same force and effect as if set forth at length herein.

41. The defendants' action demoting Ms. Hull and continuing to discriminate against her has been undertaken in retaliation for complaining about Celanese and CFMC's policy and practice of sex discrimination.

42. Plaintiff Karnes has been subjected to harassment and retaliation by the defendants for complaining about sex discrimination at Celanese. Since initiating her complaint, she has been given noticeably worse performance ratings although the quality of her work has in no way deteriorated. Plaintiff Karnes' superiors have urged her to find other employment.

43. Plaintiff Keely was fired from her position at Celanese June 30, 1972. This termination was taken in retalia-

tion for plaintiff Keely's active role as a spokeswoman for the professional women at Celanese who had approached personnel officials and management in an effort to remedy Celanese's discriminatory employment practices.

44. Plaintiff Delulio filed a complaint of sex discrimination with the Equal Employment Opportunities Commission on November 15, 1973. Since that time, she has been subjected to harassment and reprisals at Celanese. The general counsel has questioned her professional and ethical conduct in filing the complaint and has suggested that prosecution in the matter could be personally embarrassing for her. She has effectively been demoted by defendant's actions in depriving her of responsibility for on-going matters, including trips, contract negotiations and other matters on which she was working and in assigning her exclusively to do elementary legal research.

THIRD CAUSE OF ACTION

45. Repeat and reallege each and every allegation contained in Paragraphs 1 through 31 of this Complaint with the same force and effect as if set forth at length herein.

46. The defendants' action demoting Ms. Hull and continuing to discriminate against her has been undertaken in violation of the agreement between the parties dated Sept-

ember 16, 1969 and embodied in an order of the New York State Division of Human Rights September 19, 1969, a copy of which is annexed as Exhibit A.

FOURTH CAUSE OF ACTION

47. Repeat and reallege each and every allegation contained in Paragraphs 1 through 14, of this Complaint with the same force and effect as if set forth at length herein.

48. Defendants have a policy, practice, custom and usage of discriminating against women because of their sex, in recruiting, hiring and firing, and a policy, practice, custom and usage of limiting, segregating or classifying their employees by job classification, which deprives or tends to deprive female employees of employment opportunities because of their sex, in violation of 42 U.S.C. § 2000e-2. In furtherance of this policy, defendants have taken the following particular actions.

A. Hiring

49. Defendants recruit and hire only men for positions of responsibility and hire women primarily for clerical and secretarial positions. Plaintiffs are informed and believe that the corporate staff of Celanese totals 350 individuals of

whom approximately 150 are women. Of the 150 women, 16 have executive, professional or managerial positions and 135 are clericals or secretaries. The Celanese Chemical Company staff numbers approximately 150, of whom approximately 75 are professional people. Nevertheless, only one woman is employed in a professional capacity at the Chemical division. CFMC's November 30, 1972 EEO-1 Report, a copy of which is annexed as Exhibit C, shows that although CFMC employs nearly equal numbers of males (122) and females (119), at the management level, 55 are males and only six are females.

50. When a woman applies for a position at Celanese her sex is noted and she is classified from the outset on that basis. Defendants then evaluate her qualifications by:

(1) judging her primarily against other women applicants, and

(2) requiring her to have qualifications superior to men applicants.

This classification discriminates against women and deprives them of employment opportunities because of their sex.

51. Plaintiff Delulio initially applied for employment with defendant Celanese in September of 1971. Although she was qualified for a position as an attorney on the corporate staff, a male was hired in preference to her.

52. In February or March of 1972, plaintiff Delulio was informed that she would be offered a position with Celanese. However, when she spoke to the general counsel, he informed her that they would be interviewing other candidates. Defendant Celanese's reluctance to hire plaintiff Delulio was based on its preference for hiring males.

53. Plaintiff DiDio applied for employment at defendant Celanese Chemical Company in June of 1973. At that time there were two openings in the sales department. However, plaintiff was not hired for these positions, and instead they were both filled by men. Subsequently in June or July 1973, plaintiff was hired by defendants in a less responsible position.

B. Job Classification

54. Defendants have adopted a point system of grading jobs to denote levels and salary ranges. Positions usually filled by females are given less points than positions usually filled by males with the result that they entail lower status, lower salary, more limited promotional opportunities and lesser fringe benefits.

55. Defendants have slotted women into certain job titles such as secretaries, typists and most clerical classi-

fications, which have consequently become identified as "female jobs." These positions are of lower rank and responsibility than those open to men having similar qualifications, and they entail lower status, lower salary, more limited promotional opportunities and lesser fringe benefits.

56. Defendants' discriminatory policy of hiring women at lower job titles and lower salaries, and their policy of refusing women equal promotional opportunities, have limited the careers of their female employees and directly deprived women of opportunities to compete equally in the job market. Women employed by Celanese who seek employment elsewhere, experience and continue to experience the effect of defendants' policy and practice of discrimination. They are forced to accept positions and salaries which, while better than those received at Celanese, are still less than they might otherwise obtain had their qualifications been evaluated and recognized in non-discriminatory fashion by defendants.

C. Termination of Employment

57. Defendants discriminate against female employees in firing and layoffs. On or about June 23, 1972, defendants decided to make a substantial reduction in personnel. Preference in continued employment was given to male employees be-

cause of their sex and a highly disproportionate number of women were discharged.

58. Plaintiff Jacquelyn Keely was fired from her employment in June of 1972. Although plaintiff was the best qualified merchandising representative in any of the merchandising departments, her employment was terminated while males, with less experience and less seniority were retained.

FIFTH CAUSE OF ACTION

59. Repeat and reallege each and every allegation contained in Paragraphs 1 through 14 of this Complaint with the same force and effect as if set forth at length herein.

60. Defendants have engaged in a policy, practice, custom and usage of discriminating against their female employees because of their sex by paying them less and giving them fewer fringe benefits than their male counterparts for performing the same or comparable tasks, in violation of 42 U.S.C. § 2000e-2. In furtherance of this policy, defendants have taken the following particular actions.

A. Salary

61. Male employees are paid the same or more than female employees who have better qualifications and higher-

ranking positions. In 1966 Ms. Hull was being paid $4,000 per year less than a male associate with fewer qualifications and fewer responsibilities; in 1968 a male in Ms. Hull's department, employed at her level and with ten years less experience than she, was paid $3,000 more per year.

62. Plaintiff Delulio was hired by defendant at a salary of $24,000. She was initially promised an assignment in the legal department dealing with CFMC. Plaintiff learned that when an appropriate position became available, it was offered to a male attorney candidate at a salary of $32,000. The male to whom the position was offered was not admitted to practice in the United States and had less experience than plaintiff Delulio. Plaintiff has since been transferred to the position. However, her salary is still less than that paid to comparable males.

63. Plaintiff DiDio is informed and believes that her salary of $12,000 is substantially less than that of similarly qualified male employees. Although information regarding salaries is not readily accessible to her, she has learned from the general conversation that men are paid substantially more than she.

64. While plaintiff Karnes was employed by defendant Celanese as Manager of Fabrics Creative Services she was paid a salary of $25,000. During the course of her employment at that position, she was assigned extensive responsibilities beyond those ordinarly associated with the position. Nevertheless, no increase in salary was given to her to compensate her for the additional work.

65. Women are given smaller merit raises than men. When being considered for merit raises, women are judged by more stringent standards than those applied to men.

66. By reason of the foregoing, plaintiffs and the class they represent have been damaged in an amount equal to the difference in wages, salaries, and other forms of compensation they would have earned in absence of illegal discrimination against them from (a) the later of their dates of employment or April 8, 1967, to (b) the date upon which judgment is entered in this action or the date they cease to be employed by defendants, whichever is earlier.

B. Fringe Benefits

67. Defendants provide their employees with a health insurance plan that singles out a characteristic unique to

women (childbearing capacity) and differentiates in insurance coverage on the basis of that characteristic to the disadvantage of women. The basic health insurance plan provides for reimbursement to all employees for all hospital expenses for up to 120 days in a semi-private room, the first $600 of expenses for other hospital services plus 80% of additional hospital services. Pregnancy (including childbirth, miscarriage and abortion) is specifically excepted from this general coverage. It is the only expense for which the health plan provides a maximum allowable benefit. Defendants' health insurance plan does not single out any characteristic unique to men; they do not differentiate and provide less complete medical coverage on the basis of any such unique characteristic.

68. Defendants provide employees with a temporary disability program that pays weekly disability indemnity benefits. By the terms of the policy, male employees are covered for all disabilities. The policy, however, limits benefits to female employees for disability due to pregnancy to $70.00 per week for six weeks. This program singles out a characteristic unique to women and differentiates on the basis of that single characteristic to the detriment of female employees.

69. Plaintiff Mary Swet gave birth February 1, 1974. In connection with her delivery and period of rehabilitation she has suffered from defendants' discriminatory health insurance and disability plans in that her physical incapacity has not been treated in the same manner as a male's.

70. By reason of the foregoing, plaintiffs and the class they represent have been damaged in an amount equal to the difference between the benefits they actually received under the health insurance and disability plans and those they would have received in the absence of illegal discrimination against them from (a) the later of their dates of employment by the defendants or April 8, 1967, to (b) the date upon which judgment is entered in this action or the date they cease to be employed by the defendants, whichever is earlier.

71. Defendants have a policy, practice, custom and usage of discriminating against women because of their sex in providing training opportunities. Qualified female employees are not selected to attend and participate in educational programs which are made available to male employees.

72. Defendants have a policy, practice, custom and usage of discriminating against women because of their sex in

providing travel opportunities and other fringe benefits. Female employees are excluded from trade association meetings and conferences as well as from goodwill and client relations functions.

SIXTH CAUSE OF ACTION

73. Repeat and reallege each and every allegation set forth in Paragraph 1 through 72 of this Complaint with the same force and effect as if set forth at length herein.

74. Plaintiffs Hull, Karnes, and Keely have made the violations of law alleged herein known to defendants. In spite of defendant Brook's overall responsibility for the lawful management of Celanese and CFMC respectively, and in spite of defendants Jordan's, Murphy's and Wiesner's special responsibility for equal employment opportunities by virtue of their membership on Celanese's Committee on Public Responsibility, no remedial action whatever has been taken.

75. Taken together, the acts set forth in Paragraphs 1 through 74 of this Complaint constitute a pattern, practice, custom and usage violative of Title VII of the 1964 Civil Rights Act.

76. Defendants have engaged in the oppressive course of conduct alleged herein, intentionally, wilfully and with

full knowledge that such conduct is in derogation of the law and the rights of the plaintiffs and the members of the class they represent. Plaintiffs and the class they represent are, therefore, entitled to exemplary damages commensurate with the wrongful acts herein alleged.

WHEREFORE, plaintiff respectfully prays that, with respect to all of such causes of action, this court:

1. Enjoin defendants, their agents, successors, employees, attorneys and those acting in concert with them and at their direction from (a) discriminating against the class plaintiffs represent and each member thereof with respect to their compensations, terms, conditions or privileges of employment because of their sex, and (b) from continuing or maintaining any policy, practice, custom or usage of denying, abridging, withholding, conditioning, limiting or otherwise interfering with the rights of the class plaintiffs represent and each member thereof to enjoy equal employment opportunities as defined in and secured by Title VII of the Civil Rights Act of 1964.

2. Declare and adjudge that the policies, practices, customs and usages complained of herein violate the provisions of Title VII of the Civil Rights Act of 1964.

3. Enter judgment for compensatory damages in an amount to be fixed upon inquest, and based upon (1) the difference between the wages, salaries and other compensation each member of the class actually earned and the wages, salaries and other compensation each member of the class would have earned in the absence of illegal discrimination against her from (a) the later of her date of employment by the defendants or April 8, 1967 to (b) the date upon which judgment is entered in this action or the date she ceases to be employed by defendants, whichever is earlier, and (2) the difference between the benefits she actually received under the health insurance and disability plans defendants provide for employees and those she would have received in the absence of illegal discrimination against her during the same period.

4. Award plaintiffs and the members of the class damages by way of example against defendants in an amount commensurate with the wrong incurred.

5. In furtherance of its judgment, enter a decree directing defendants to conform to the terms of a plan of compliance and directing defendants to submit such a plan in form suitable for entry as a decree within 30 days of entry of judgment herein, which plan shall include affirmative meas-

ures with goals and timetables insuring compliance with Title VII of the Civil Rights Act of 1964, including:

(a) With respect to the implementation of this program:

(1) establishing an employee committee which will be composed of at least 50% women to oversee the operation and updating of the program;

(2) set up an employee committee composed of at least 50% women to solve employee/employer problems within CFMC;

(3) make career counseling available to female employees.

(b) With respect to recruiting, hiring and firing policies:

(1) classification and processing of applications for employment without regard to sex;

(2) the use of criteria unrelated to sex in evaluating, recruiting and discharging female and male applicants;

(3) classification of positions on a sex-free basis;

(4) the immediate hiring of women for executive and management positions in numbers large enough to overcome the past effects of discrimination.

(c) With respect to wages, salaries and other compensation:

(1) paying the same salaries and wages to women as are paid to men performing the same or comparable tasks;

(2) granting women merit raises of the same amount as are granted to men; and

(3) judging and evaluating women by the same standards as applied to men in considering employees for merit raises;

(d) With respect to promotion:

(1) an immediate promotion of all members of plaintiff's class to the positions which they have been denied by reason of their sex with seniority in such positions dating from the first instance of wrongful failure to place them therein;

(2) providing equal opportunity and frequency of promotion for women and men holding the same or comparable positions;

(3) applying the same standard for promotions to women and to men;

(4) hiring women for executive and managerial positions to overcome the past effects of discrimination;

(5) promotion of women employed in female-identified positions on the same basis as provided to men with comparable job qualifications; and

(6) post all job openings on company bulletin board so that women and men interested may apply.

(e) With respect to training opportunities programs and all other fringe benefits:

(1) opening all training programs or other training opportunities to women;

(2) providing women equal opportunities to travel, attend conferences and engage in good will and client relations functions.

(f) With respect to insurance and other fringe benefits:

(1) providing employees with an insurance plan that reimburses women for hospital and medical expenses incurred in connection with pregnancy to the same extent that it reimburses all employees for other hospital and medical expenses incurred;

(2) providing for weekly disability indemnity benefits in cases of disability due to pregnancy on the same basis as it provides for such benefits in cases of disability due to other causes.

(g) With respect to defendants' use of assumptions attributed to women as a group, assigning job responsibilities and making job assignments on the basis of an individual's qualifications and abilities, without regard to sex, and without regard to the sex-based preferences of co-workers, supervisors, employers, or the public at large..

6. Allow plaintiffs their costs incurred herein, including reasonable attorneys' fees, accounting fees, auditing fees, expert witness fees and consultant's fees, for the benefit of the class and for the representation of the class as a whole.

7. Grant such other and further relief as may appear to this Court to be just and equitable.

Victor Rabinowitz

RABINOWITZ, BOUDIN & STANDARD
Attorneys for Plaintiffs
Office & P. O. Address
30 East 42nd Street
New York, New York 10017

Dated: New York, New York
March , 1974.

AFFIDAVITS OF:

ROSANNE DiDIO

MARILYN KARNES

MARY SWET

JACQUELYN KELLY

IN SUPPORT OF PLAINTIFF'S MOTIONS ..... OMITTED

AFFIDAVIT OF DONATA DELULIO

IN SUPPORT OF PLAINTIFF'S MOTIONS

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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CAPTION

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DONATA DELULIO, being duly sworn, deposes and says:

I have been employed by the defendant Celanese Corporation (referred herein as "Celanese") since July 1972 as an attorney; my position is now that of an Associate General Counsel. I make this affidavit in support of plaintiffs' motion to amend the complaint, and for leave to intervene. I have read the complaint and the proposed amended complaint in the above-captioned action and consider

that I am a member of the class as described in the proposed amended complaint. I, like plaintiff Hull, have been subjected to various forms of sex discrimination by the defendant, Celanese, particularly with respect to hiring, promotions and transfers, salary and raises, training and education programs, public relations and client good-will activities.

Beginning in September of 1971, I was interviewed for a position as an attorney in the General Counsel's office of Celanese. I spoke with individuals in the Personnel Department and various attorneys in the General Counsel's office during the course of six or seven interviews. Finally, in December of 1971, William Hoffman, an attorney, was hired to fill the position for which I had been considered. Mr. Hoffman was an attorney with less experience than me and I believe that the reason Mr. Hoffman was hired in preference to me was because he is a male.

In February or March of 1972, I was told by a Personnel official at Celanese, Mr. Crabtree, that I would be offered a position as an attorney in the General Counsel's office. However, immediately thereafter when I went to speak with James Scott Hill, General Counsel, he stated instead that they would be interviewing other candidates. In April

of 1972, I was officially offered the position in the General Counsel's office at a salary of $24,000.

I accepted the position early in June and agreed to begin work in July. It was agreed that I would work for a short period of time on matters related to Celanese's Chemical Division with a permanent assignment to the Fibers Division in the near future. In December, 1972, Robert Ciovacco, an attorney for the Fibers Division, announced his resignation from Celanese. I spoke with James Scott Hill about the opening in the Fibers Division created by Mr. Ciovacco's resignation, and he promised me a transfer as soon as the vacancy became "available." In February of 1973, Ciovacco left Celanese, creating a vacancy in the department in which I had been promised a position. Again, I requested James Scott Hill to transfer me to the Fibers Division, pursuant to the agreement under which I had begun my employment at Celanese. He again stated he would. Instead, Ray Schuler (another Celanese attorney) was given the overall supervision for the Fibers Division, assisted by a series of attorneys "borrowed" from a major law firm representing Celanese, rather than by transferring me to the opening as had been promised.

In May, Ray Schuler announced his resignation; again I spoke with James Scott Hill about my transfer to the Fibers Group. One week later, he told me that I could not have the transfer (though previously promised to me many times) because I "did not have enough anti-trust experience."

In May 1973, I learned that Roger Duncan, a Canadian attorney had been interviewed for the position I was seeking in the Fibers Division. Mr. Duncan had been offered the position at a salary of $32,000. He was not admitted to practice law in the United States, had less experience than I, and no anti-trust experience at all. Mr. Duncan did not accept the offer. On June 1, 1973, Leslie Susser (a Celanese Attorney) was transferred to the Fibers Group. Although there was another vacancy in the Fibers Group, it was filled again by utilization of the "borrowed" attorneys.

After repeated complaints about the General Counsel's refusal to transfer me, on October 15, 1973 I was transferred to the Fibers Division. However, this transfer was accomplished because a newly hired attorney was willing to take on my previous responsibilities for the Chemical Division.

## Affidavit of Donata Delulio

After learning of the offer to Roger Duncan, I became concerned that the salary at which I had been hired was out of line with the salaries which were generally paid to male attorneys in the office. I have had eight years of experience as a practicing attorney and I believe that I was hired at an exceptionally low salary. Moreover, while my annual raise, as a percentage of previous salary may compare favorably with male attorneys, the actual dollar amount is significantly less and as a result the disparity in wages continues to increase as long as I remain at Celanese. Furthermore, male attorneys frequently receive bonuses and other forms of compensation which I have never received.

Other aspects of my employment as an attorney in the General Counsel's office are noticeably different from the conditions under which male attorneys work. For example, in October 1972 while I was working for the Chemical Division, I was excluded from an annual fall sales meeting held in Bermuda, to which attorneys working for the Chemical Division had always been invited.

In the late summer or fall of 1973, after I had been told I lacked important anti-trust experience, I made a request of Manuel Schultz, my immediate superior, to be per-

mitted to attend a one-day anti-trust seminar in New York. Approximately three or four other attorneys from the General Counsel's office attended that seminar; however, I was denied the opportunity to attend. On another occasion in October 1973, I requested permission to attend an Environmental Protection Agency seminar which was being held in Washington. At that time I was working on environmental matters in the General Counsel's office. However, the attorney in charge refused to permit me to attend.

In addition to my more substantial complaints, I have been repeatedly subjected to a pervasively discriminatory atmosphere at work. For instance, I am provided less secretarial support and smaller expense accounts than male attorneys and I am frequently asked to perform tasks which have no relationship to my employment as an attorney, such as arranging luncheons for attorneys who are leaving or buying Christmas gifts for secretaries. There has never been any serious consideration or response to any of the complaints that I have made to the General Counsel, to my immediate superiors, or to personnel representatives.

On November 15, 1973, I filed a complaint with the Equal Employment Opportunities Commission against Celanese

Corporation, Jerome Wiesner, Vernon Jordan, Grayson M. P. Murphy, and John W. Brooks, Directors, and Manuel Schultz, General Attorney, alleging that I had been discriminated against in employment on the basis of sex. Since filing my complaint, I have been subjected to harassment and reprisals. The General Counsel, Robert Longman, has questioned my professional and ethical conduct in filing the complaint; he has suggested that prosecution of the action could be personally embarrassing to me; he has criticized me personally in front of my associates. Moreover, the work which I have been assigned is less responsible than that which I had previously handled. I have been forced to cancel contract negotiations, trips and other ongoing matters in order to devote my time exclusively to elementary legal research. I am asked to keep more extensive records of the work I do than are any other attorneys. My work is circulated to supervisory level attorneys unconnected with the particular matters in order to keep a close watch on my performance.

I believe that the discrimination to which I have been subjected is basically the same as that complained of by plaintiff Hull. My experience as a member of the Celanese

corporate staff leads me to believe that the defendants discriminate against women in all divisions and at all levels of employment at Celanese. Celanese's corporate offices where I am employed has a total staff of approximately 350. Of these, I would estimate that half are women. Nevertheless, only about 16 women hold professional or managerial level positions. The amendment of the complaint for the purposes of expanding the class to include all female Celanese employees in New York will bring before this Court all parties who are affected by defendants' illegal activities and will promote efficiency in the resolution of their allegations and comprehensive relief to all women directly affected by Celanese's discriminatory policy.

Donata Delulio

DONATA DELULIO

Sworn to before me this
28th day of February, 1974.

Marlene Connor

Notary Public

MARLENE CONNOR, Notary Public
State of New York, No. 03 5789465
Qualified in Bronx County
Commission Expires March 30, 1975

## NOTICE OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| JOAN HULL, on behalf of herself and others similarly situated, Plaintiffs, -against- CELANESE CORPORATION; CELANESE FIBERS MARKETING CO.; JOHN W. BROOKS, VERNON E. JORDAN, GRAYSON M-P MURPHY and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION; and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO., Defendants. | 73 CIV. 3725 (RO) NOTICE OF MOTION |

S I R S :

PLEASE TAKE NOTICE that, on the annexed affidavits of Gilbert S. Edelson, sworn to March 26, 1974; Robert A. Longman, sworn to March 25, 1974; Lloyd E. Sims, Jr. and Benjamin H. Sands, sworn to March 20, 1974; John J. Ryan, sworn to March 21, 1974; Douglas E. Nemens and Ralph J. Hobart, sworn to March 22, 1974, and on the motion papers filed by plaintiff with this Court on March 13, 1974, and on all prior proceedings had herein, the undersigned will move this Court in Room 517, at the United States Courthouse, Foley Square, New York, New York, on the 5th day of April, 1974, at 2:30 o'clock in the afternoon or as soon thereafter

as counsel may be heard, for an order pursuant to Rule 12 of the Federal Rules of Civil Procedure and the inherent powers of this court,

a) denying the application of Donata A. Delulio for intervention in this action and striking from plaintiff's proposed amended complaint all allegations relating to Donata A. Delulio;

b) disqualifying plaintiff's counsel from continuing to represent plaintiff in this action;

c) striking from the proposed amended complaint all allegations concerning the bringing of this action as a class action pursuant to Rule 23, Federal Rules of Civil Procedure;

d) staying of all proceedings herein, if the Court finds that further facts are needed for the determination of any of the above aspects of this motion, in order that defendants may conduct discovery to ascertain such facts; and

e) such other relief as the Court deems just and proper.

Dated: New York, New York
March 26, 1974

Yours, etc.,

ROSENMAN COLIN KAYE PETSCHEK
FREUND & EMIL

By _____
A Member of the Firm
Attorneys for Defendants
575 Madison Avenue
New York, New York 10022
688-7800

## AFFIDAVIT OF GILBERT S. EDELSON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| JOAN HULL, on behalf of herself and others similarly situated, Plaintiffs, | Index No. 73 Civ. 3725 |
| -against- CELANESE CORPORATION, CELANESE FIBERS MARKETING CO., JOHN W. BROOKS, VERNON E. JORDAN, GRAYSON M-P MURPHY and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO., Defendants. | AFFIDAVIT |

STATE OF NEW YORK )
:SS.:
COUNTY OF NEW YORK)

GILBERT S. EDELSON, being duly sworn, deposes and says:

1. I am a member of the firm of ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL, attorneys for defendants herein, and fully familiar with the facts and prior proceedings. I submit this affidavit in support of defendants' motion (i) to deny the application of Donata A. Delulio ("Delulio") for intervention in this action and to strike from plaintiff's proposed amended complaint all allegations relating to Delulio; (ii) to disqualify plaintiff's counsel; (iii) to strike from the proposed amended complaint all allegations

concerning the bringing of this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure; and (iv) to stay all proceedings herein in the event that the Court finds that further facts are needed for the determination of any of the above aspects of this motion, in order that defendants may conduct discovery to ascertain such facts.

2. This motion proceeds from one fundamental factual situation. Delulio, a lawyer for Celanese Corporation ("Celanese") now seeks to intervene as a plaintiff in the same litigation in which she has acted as defense counsel, having retained plaintiff's counsel and announced in a sworn affidavit that her client is guilty as charged.

Prior Proceedings Herein

3. The plaintiff, Joan Hull ("Hull"), is an employee of defendant Celanese Fibers Marketing Company ("CFMC"), a division of the defendant Celanese. The complaint in this action charges Celanese, CFMC, two officers and three directors of Celanese with violating Title VII of the Civil Rights Act of 1964 because of alleged discrimination on the basis of sex. The action is designated as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. Hull claims to represent female employees of and applicants for positions with CFMC.

4. The complaint alleges that Hull, and other members of the alleged class of CFMC female employees and applicants, have been and are being discriminated against because of their sex in such matters as recruiting, hiring, promotion, pay, termination, job classification, fringe benefits and maternity benefits.

5. Hull asserts that she filed charges with the Equal Employment Opportunity Commission ("EEOC") in September 1972, and that they were referred to the New York State Division of Human Rights, which made a finding of probable cause. Thereafter, the EEOC resumed jurisdiction of Hull's complaint and advised her on July 31, 1973 that she was entitled to institute a civil action. The complaint herein was filed on or about August 24, 1973. A copy of the complaint is annexed hereto as Exhibit A.

The defendants answered, denying the material allegations of the complaint. Both Hull and the defendants served Interrogatories and have responded to Interrogatories served on them.

6. On March 13, 1973, plaintiff moved (i) for an order permitting the filing of an amended complaint; (ii) for an order that the action brought as a class action be so maintained; and (iii) for leave to intervene by Mary Swet and

Marilyn Karnes, two CFMC employees; Jacquelyn Keely, a former CFMC employee; Rosanne DiDio, an employee of another Celanese division, the Celanese Chemical Company; and by Delulio, a lawyer on the Celanese corporate staff.

7. The proposed amended complaint (hereafter "the proposed complaint") proposes to expand the class beyond the female applicants and employees of CFMC to include all female applicants and employees of Celanese at its New York City headquarters. The proposed complaint makes essentially the same allegations of sex discrimination as are found in the initial complaint, but alleges that they occur throughout Celanese's New York headquarters. Thus, according to the affidavit of Victor Rabinowitz submitted in support of plaintiff's motion, after Delulio and DiDio came forward with claims of sex discrimination

> " . . . it became apparent that the discriminatory policies to which Ms. Hull was subjected were not confined to one division of the corporation but permeated its employment policies . . . " (p. 2)

According to the same affidavit ( 5):

> "The proposed amended complaint integrates the intervenors' particular grievances into the format of the initial complaint."

Copies of the Rabinowitz affidavit, the proposed complaint and the affidavits in support thereof are annexed hereto as Exhibit B.

The Facts with Respect to Delulio

8. For the convenience of the Court I shall, in addition to setting forth my own knowledge of the facts, summarize the relevant facts as set forth in the other affidavits submitted in support of defendants' motion.

9. Delulio has been employed as a lawyer on the Celanese corporate staff since in or about July 1972.

10. In or about February 1973, Delulio was assigned, among her other responsibilities, the duty of advising the Minority Relations Department of Celanese, which deals with matters relating to equal opportunity throughout the corporation. She was also assigned at that time to represent Celanese in the Hull matter, which was then pending before the New York State Division of Human Rights.

11. I am informed that among Delulio's activities on the Hull case were:

a) Delulio participated on Celanese's behalf in the proceeding brought by Hull before the New York State Division of Human Rights. In the course of her work, Delulio helped to prepare and submit a revision of a proposed conciliation agreement, and participated in the attempted conciliation which is referred to in both the initial complaint (¶25) and the proposed complaint (¶30).

b) When Hull refused to enter into a conciliation agreement, a finding of probable cause was issued by the Regional Director of the Division. On behalf of the respondents, Delulio prepared and submitted an appeal from that finding to the Human Rights Appeal Board.

c) Delulio was supplied with and studied the files of the Celanese Minority Relations Department and the CFMC Personnel Department relating to the charges made by Hull. Copies of documents from those files were made by and for Delulio.

d) Delulio consulted on a regular basis on the facts of the Hull case with outside counsel, members of the Celanese Minority Relations Department, the CFMC Personnel Department, and others in the company. She also interviewed and participated in interviews with persons who have knowledge of the facts relating to Hull's charges, including persons against whom Hull and the prospective intervenors have made specific charges, such as Robert Wylie and Ronald Wright.

e) On the basis of the documents she examined, which included memoranda prepared by other attorneys, the interviews she conducted and her consultations with others participating in the defense, Delulio prepared a lengthy

memorandum on the law and the facts applicable to the Hull case.

12. In addition to her activities as a lawyer in the defense of the Hull action, I am informed that Delulio performed other legal services for Celanese on matters relating to the allegations of the proposed complaint and the general subject of equal employment opportunity, as follows:

a) In the Spring of 1973, Delulio told Benjamin H. Sands, Director of Minority Relations for Celanese, that she was the company's "equal opportunity" lawyer and asked him to keep her fully informed on all matters relating to equal opportunity and allegations of discrimination throughout the company. Sands complied with that request. He and other members of his department made full disclosure to Delulio of information relating to such matters, including present and proposed policies and practices of Celanese in this area. For an approximate seven-month period, Delulio had complete access to the files and personnel of the Celanese Minority Relations Department and acquired a comprehensive knowledge of the activities of that department.

b) The initial Hull complaint alleges that in or about June 1972, Celanese and CFMC made a substantial reduction in personnel, and that a disproportionate number of women were discharged because of sex discrimination. After

the complaint was filed, Sands reviewed in detail with Delulio the circumstances of the 1972 personnel reduction. Among other matters, they reviewed together the facts with respect to the termination of Keely, a proposed intervenor who claims that she was terminated because of sex discrimination.

c) In addition to her work with the Celanese Minority Relations Department, Delulio worked closely with the CFMC Personnel Department. From time to time in the period from February to September 1973, Delulio was consulted by members of that Department on such matters as affirmative action programs and the retention of outside experts to assist and advise on matters relating to equal opportunity for women.

d) In or about the Spring of 1973, a long standing dispute between Marilyn Karnes and a number of her superiors re-emerged. Delulio was consulted on that matter, reviewed the facts, and gave advice. Karnes now seeks leave to intervene and refers both in her affidavit and complaint (¶38) to the matter on which Delulio gave advice.

13. My firm began to represent Celanese in the Hull case in early August 1973. At that point, the matter was pending before the New York State Division of Human Rights.

A finding of probable cause had been issued by the Regional Director of the Division, but no date for a hearing had, as yet, been set. We were conscious of the fact that charges had been filed with the EEOC and the 180-day conciliation period was about to run out. An action by Hull in this Court was expected. We were asked to prepare the case.

14. I met in early August with James Scott Hill, then Vice President, Secretary and General Counsel of Celanese who briefed me generally on the situation. Hill told me that I would be working with Delulio, who had worked on the case for a number of months. To assist me in familiarizing myself with the facts, I was given a lengthy memorandum of fact and law, which Delulio had prepared. Annexed as exhibits to that memorandum were other memoranda, some of which had been prepared by other lawyers who had worked on the matter.

15. From early August to late September of 1973, both before and after the complaint in this action was served, I worked closely with Delulio on the Hull case. I recall attending a number of meetings with Delulio at which witnesses were interviewed and relevant facts and defense strategy discussed. My time records show that from August 12, 1973 to September 24, 1973, I participated in at least five meetings on the Hull case at which Delulio attended. My records also

show at least nine telephone conversations with her on the matter. In addition, I had a number of informal meetings on the subject with Delulio which I do not believe that I recorded.

16. In or about late September 1973, I was told that Delulio had been relieved of her assignment on the Hull case. Thereafter, I saw her periodically at Celanese and had at least one conversation with her in October or November 1973 about our activities on the case.

17. On or about November 15, 1973, approximately two months after she had been relieved of her assignment on the Hull case, Delulio filed charges of sex discrimination with the EEOC. Delulio did not then disclose to Celanese that those charges had been filed.

18. On December 17, 1973, I attended the annual luncheon of the Celanese Law Department, and sat next to Delulio. My recollection is that we discussed the Hull case through lunch. I described at length an interview which I had had that morning with a prospective witness, and also discussed Celanese's position on various aspects of the law and facts of the case. I did not know that Delulio had filed charges. Delulio did not then so inform me, nor did she attempt to stop the conversation about the Hull case.

19. I was surprised to learn on or about December 20, 1973 that Delulio had written to Hill on December 19 informing him that in light of her conversation with me at the Christmas lunch, she felt that it was now fair that he be advised that she had filed charges with the EEOC. I was even more surprised at Delulio's statement in her letter to Hill that she "may wish to intervene in the Hull case."

20. I was disturbed to learn shortly thereafter that Delulio had retained Hull's counsel, the firm of Rabinowitz, Boudin and Standard ("the Rabinowitz firm"). While I have a high regard for the Rabinowitz firm, I believed that their representation of both Hull and Delulio raised questions under the Code of Professional Responsibilities. I so informed Ms. K. Randlett Walster of the Rabinowitz firm in two separate telephone conversations in early 1974. Ms. Walster replied that her colleagues had given careful consideration to the questions which I had raised, and concluded that their representation of both Hull and Delulio was proper.

21. On or about January 8, 1974, Robert A. Longman, newly appointed Vice President, Secretary and General Counsel of Celanese, met with Delulio and her attorney to discuss Delulio's claims. As his affidavit states, Longman suggested that considerations other than her sex might account

for the events and decisions which she regarded as evidence of discrimination. He said that he hoped that a solution might be found short of litigation because any litigation would necessarily raise issues of the quality of Delulio's work product and judgment. Longman was then accused of threatening Delulio.

22. On or about January 9, 1974, Longman discussed with Delulio the ethical implications of her action against Celanese. He told her that inasmuch as she had represented Celanese in the Hull case, a conflict would be presented if she gave advice to Hull or gave her views on the pending litigation, its outcome or implications to any person not directly involved in the matter. Moreover, he stated there would be a definite conflict if she participated in any way on the plaintiff's side of the Hull case. Thereafter, Longman was informed by another attorney in the Celanese Law Department that Delulio had approached him and said that she was not intervening in the Hull case.

23. On January 29, 1974, Delulio wrote to the Committee on Professional and Judicial Ethics of the Association of the Bar of the City of New York ("the Committee"), stating that she had filed charges against her client with the EEOC and intended to intervene as a plaintiff in a pending action in which she had acted as a defense counsel for her client. She requested the opinion of the Committee with respect to her professional responsibilities.

24. From December onward, I am informed, Delulio engaged in a number of activities in furtherance of the case against Celanese:

(a) She discussed her case against Celanese with other employees and stated that she expected to be successful in her claims, thereby suggesting that Celanese had violated the law.

(b) She urged at least two other female employees to join in the action.

(c) She asked at least one employee to obtain information for her for use against her client. That employee refused to go through her superior's files without his permission and suggested that Delulio call him directly. Delulio declined to do so.

(d) On January 20, 1974, an interview with Delulio appeared in an article in the New York Times dealing with the position of women in business. After referring to her complaint against Celanese, which she identified as her employer, Delulio is quoted as stating:

> "Corporations react to courts and to money . . . . I'm sorry it had to come to this, but I'm not sorry I brought suit."

(A copy of that article is annexed hereto as Exhibit C.)

(e) Delulio associated herself with Hull. On March 8, 1974, Delulio and Hull went to Longman's office, where

Delulio made accusations of harassment. When asked by Longman why she was present, Hull said that she was there "as a witness."

25. On March 12, 1974, the Committee responded to Delulio's request for an opinion. That opinion has been supplied to the court by Delulio's counsel and is annexed hereto, together with Delulio's letter of inquiry, as Exhibit D. After reviewing the facts and the law, the Committee's opinion concludes:

> In our opinion you may not properly intervene in the other employee's [Hull's] action, and you should withdraw from further prosecution of your own action."

GILBERT S. EDELSON

Sworn to before me this
26th day of March, 1974

ROSALYN S. LEVIN
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-2326793
Qualified in New York County
Term Expires March 30, 1975

EXHIBIT A, ANNEXED TO FOREGOING AFFIDAVIT

Plaintiffs' Complaint

EXHIBIT OMITTED

EXHIBIT B, ANNEXED TO FOREGOING AFFIDAVIT

Plaintiffs' Notice of Motion

EXHIBIT OMITTED

EXHIBIT C, ANNEXED TO FOREGOING AFFIDAVIT

Article in The New York Times, January 20, 1974, "More Women Advancing Into Key Business Posts" by Marylin Bender

EXHIBIT C

# MORE WOMEN ADVANCING INTO KEY BUSINESS POSTS

by

Marylin Bender

The New York Times, January 20, 1974

Women are at last moving into the pipeline of American business. Though not all of them care to acknowledge it, their presence is largely a result of government pressure and militant feminism.

And not everyone is glad to see them there.

"It just doesn't seem natural for women to be in executive jobs." said a corporate public relations man for an oil company. "A woman loses her femininity when she pays checks and puts on her own coat."

Pipeline is business jargon (a language women have to learn to speak) for the key jobs from which candidates are chosen to run companies. It is the feeder to executive titles and perquisites, to power and money.

There is no precise measuring device that calculates the recent strides women have made. But a look at major companies across the country shows the following:

¶ Women are getting significant posts, not just window-dressing or token jobs.

¶ They appear to be brushing past blacks in certain previously all-white, all-male areas such as brokerage and banking or corporate financial jobs.

¶ They are moving in numbers into the professional and lower managerial jobs that feed into the pipeline such as corporate staff lawyer, auto factory foreman or computer marketing manager.

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The New York Times, January 20, 1974

Carolyn Chin, 25 years old, is a sheet buyer at Macy's New York, a breakthrough job, since women have usually been restricted to the fashion side of retailing. She has almost doubled the $15,000 executive trainee salary with which Macy's recruited her from the Harvard Graduate School of Business Administration in 1971.

Arlene Olzak, 28, is a life insurance agent for the Aetna Life and Casualty Company in Portland, Me. The insurance industry used to assume the job was too cutthroat for a woman, the night selling hours too demanding and that men would not buy from her. Miss Olzak expects to be drawing $25,000 a year on commission within two years.

Cathy Thomas, 25, is one of the first women graduates of the General Motors Institute, the auto company's private college. (Twelve out of G.M.'s 59 top executives are alumni.) She has advanced from production foreman in a Flint, Mich., plant to engineering production studies. She expects to be promoted to general foreman (last spring G.M. has 330 women in that supervisory post as production supervisors) and then department superintendent.

NO TOP POSTS IN SIGHT

Most men in the pipeline never see the light at the end or reach the board room pinnacle of power to which it leads. Certainly no one expects any of the women to work their way to the top of billion-dollar corporations soon.

"The United States will have a woman President before the Atlantic Richfield Company does." said Susan Armstrong, 28, a personnel supervisor for the oil company.

As yet, there are no women department heads or vice-presidents. The highest female administrator is Jean Moore, named equal opportunity affairs manager after 18 years as an executive secretary.

Until the Federal Government made it clear that it meant to enforce Title 7 of the 1964 Civil Rights Act banning sex discrimination in employment, the only women see at ARCO were

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The New York Times, January 20, 1974

secretaries, an occasional economist or a systems analyst. Now there are women in finance, personnel and on the legal staff as well as in refinery blue-collar jobs.

And of the freshmen students enrolled at G.M.I. last fall, 178 of 903 were female.

WOOED BY SCHOOLS

Women are being wooed by the major business schools. Fifteen per cent of the 600 enrolled at Stanford's elite Graduate School of Business are women, up from 9 per cent last year. Ten years ago, the school had one female student.

But the young have no monopoly on the pipeline. There is a countervailing force of middle-aged women who have no college degrees or credentials other than long experience. Because companies could not find enough women managers by raiding other companies (as they tried to do with blacks) they have had to cultivate some of the shrinking violets in their own backyard.

For example, Jetta Brenner, 47, is general manager of the Sheraton Russell Hotel in New York, the first woman to run a big city hotel in the chain.

"One of my first questions was, 'Why did you ask me instead of a fair-haired management trainee'?" Mrs. Brenner recalled. Answer: They wanted "a lady manager."

At Avon Products Inc., Katherine Young, 58, who started 20 years ago as a door-to-door Avon Lady, is director of field communications, a post just below vice-presidential level. Historically, Avon has sold fragrances and cosmetics to women through independent saleswomen, but the highly profitable company was run exclusively by men. In August 1972, two women were named vice presidents and in the last year, 31 district managers (formerly a dead end woman's job of recruiting Avon Ladies) have moved to managerial or supervisory trainee posts.

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BANK PRESIDENT

Rita Mackey, 53, became president of the $200-million Marine Midland Bank-Northern in Watertown, N. Y. last month. She started as a clerk in 1936.

"Even five years ago, I didn't think I was going to be president." she said.

Like many long-time women in the burgeoning banking business, her responsibilities grew with her bank.

One of the chief handicaps of women in business, according to Dr. Margaret Henning of Boston, one of the new breed of female management consultants, is that they have lacked general management experience.

"They tended to hang on to their narrow technical and professional specialties," she said.

At International Business Machines Corporation, for example, highly educated women who were systems analysts and service representatives taught customers and I.B.M.'s male executives the mysteries of the computer. But only in the last five years, since I.B.M. embarked on its program to bring women into its management structure, have women begun to repair I.B.M. equipment and manage multimillion dollar accounts. Six women are now managers of I.B.M. branch offices. There is one female vice president. She is Jane Cahill, 41, director of communications.

Male assumptions and myths about women have formed another formidable barrier. A crumbling one is that women will not relocate for a promotion. Elaine Bond, 38, moved from Boston to I.B.M. headquarters in Armonk, N.Y. for her promotion to director of programing, a position within sight of a vice presidency. Her husband approved and found himself another job, too.

Mrs. Bond recalled that some of her male superiors had often worried about the effect of such a move, or of the

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traveling required for earlier jobs, upon her husband.

"I've had to say to them. 'Let me make the decision.'" she reported. "The thinking on the part of the male manager is how the promotion would impact the woman's husband and so they tend to avoid it, not out of a motive to hold women back but because they couldn't cope with such a decision in their own households. The higher you go, the worse it is."

4% ARE WOMEN

Pearl Meyer, vice president of Handy Associates, an executive search firm, said, "In the past, women have been reluctant to change jobs. They were loyal and afraid to move. They sat there and hoped to be appreciated and loved and taken care of."

But Handy's national mobility survey for the last six months of 1973 indicated that 4 per cent of those seeking executive positions were women, the first time women counted for more than half of 1 per cent. "They now have hope," she said.

Unmarried women face special bias.

"You're single, you don't need the money." Donata Delulio, 32, an associate general counsel of Celenese Corporation, said she was told when she protested that she was not being paid as much as male lawyers.

Last month, she filed a complaint with the Federal Equal Employment Opportunity Commission alleging that her employer practiced sex discrimination in pay and promotion opportunities. [emphasis added]

"No one wanted to be my secretary," said Nancy Havens, an associate at Kidder, Peabody & Co., Inc., a Wall Street firm. She was telling a career seminar for Harvard Business School why "it's no fun being the only woman in an investment banking department."

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The New York Times, January 20, 1974

On her first underwriting deal, the head of the department did not want her to attend the meetings "because he said the head of the company swears,"

SIGNS OF COMPETITION

With Government pressure to hire and promote both blacks and women, there are spotty symptoms of competition between the two groups.

Some managers refuse to consider women as deprived.

"A black Spanish-speaking woman who is Jewish or married to a Jew would cover many grounds here, especially if she were something like a metallurgical engineer," said Warren Bacon, head of the affirmative action program at Inland Steel, whose recruiting brochure is directed solely to males.

"But I don't consider women a minority. I think race and color are the most important factors in determining that," said Mr. Bacon who is black.

Minority recruitment specialists and business school placement officers indicate that black males have a definite edge in sales and supervisory line positions. White women, because of their educational and cultural advantages or long experience in administrative ranks, are ahead in areas like finance and accounting.

Rarest of all, the qualified black female can pick and choose.

"I can't believe I just turned down a $45,000-a-year job as financial vice president of a retail concern," said Claudine Malone, 32, assistant professor of controls at the Harvard Business School. She prefers to continue teaching for a while.

NEW COMMISSION HEAD

A new figure who will be closely watched on the Washington scene in coming months by blacks and women is John H. Powell Jr.,

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The New York Times, January 20, 1974

who has just been sworn in as chairman of the Equal Employment Opportunity Commission. He succeeds William H. Brown 3d, another black Republican, who led the agency into hot pursuit of corporate race and sex discrimination.

Ever since the commission received enforcement powers in March, 1972, it has taken some of the mightiest corporations into court and obtained consent agreements. It has filed 73 lawsuits alleging sex discrimination and settled nine by consent decree.

The American Telephone and Telegraph Company agreed to give $38-million in back pay and increases to its women and minority male employes.

"Since A.T. & T., they're all scared," said Barbara Boyle, one of the consultants whose client list has swelled as a direct result of corporate fright. Miss Boyle is a star performer on the equal employment opportunity conference circuit (another offshoot of the scare), where a popular topic is "how to avoid being sued."

BACKLOG COULD JUMP

In the year ended July 30, 1973, the commission received 24,300 sex discrimination complaints against companies. Its backlog of 65,000 cases in 1973 is expected to reach 80,000 this year.

But more and more women are gathering courage to file their own lawsuits, as they can do after going through the rituals of the E.E.O.C. and state human rights agencies.

"Corporations react to courts and to money." said Donata Delulio. "I'm sorry it had to come to this but I'm not sorry I brought suit."

She is still employed at Celanese. Employer retaliation against a complaining employee is also proscribed by law. [emphasis added]

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The New York Times, January 20, 1974

Women are advised to make "their moves for opportunities in the market place now," said Mrs. Meyer of Handy Associates because economic indicators forecast a warning. One of the reasons for the strong push for minorities and women in the business pipeline has been the shortage of management people in their forties.

But those post-World War II babies will start entering the job market with their college and postgraduate degrees in the next 10 years.

"And those management jobs will dry up," she predicted. "The preference could go back to the white male. There could be a lot of bitterness."

EXHIBIT D, ANNEXED TO FOREGOING AFFIDAVIT

Letter to Donata Delulio from the Committee on Professional and Judicial Ethics of the Association of the Bar of the City of New York, dated March 12, 1974 and Ms. Delulio's request for opinion, dated January 29, 1974.

EXHIBIT D

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK
42 WEST 44TH STREET
NEW YORK 10036

COMMITTEE ON PR SIONAL AND JUDICIAL ETHICS

ALVIN H. SCHULMAN
CHAIRMAN
200 PARK AVENUE
NEW YORK 10017
867-5500

RICHARD CASHMAN
SECRETARY
200 PARK AVENUE
NEW YORK 10017
867-5500

March 12, 1974

Ms. Donata A. Delulio
414 East 52nd Street
New York, New York 10022

Re: Reference No. 74-34

Dear Ms. Delulio:

You have asked whether, as an Associate General Counsel of a large corporation, and having worked on equal employment opportunity matters for that corporation (including the corporation's defense against a female employee's charges of sex discrimination), consistent with the Code of Professional Responsibility, you may (1) intervene in the other female employee's pending action, and (2) prosecute a claim of sex discrimination against the corporation on your own behalf before the Equal Employment Opportunities Commission.

In our opinion, you may not properly intervene in the other employee's action, and you should withdraw from further prosecution of your own action.

1. Intervention in the Other Employee's Action. The other female employee mentioned in your letter of inquiry had filed charges of sex discrimination against the corporation with federal and state agencies, and now has pending in federal court an action against the corporation for sex discrimination. For approximately six months you had general responsibility with respect to employment discrimination actions against the corporation and you worked specifically on the other female employee's case, helping to prepare the corporation's defense. Although you no longer are assigned to that matter, during that six-month period you became privy to, among other

things, specific information concerning the employment policies and practices followed by the personnel department of the division in which the other female employee was employed, and you were able to form a general impression of the merits of her case. It is difficult to imagine how such information could be kept confidential in the course of your proposed intervention in the other female employee's federal action.

Your proposed intervention would appear, therefore, to involve a breach of the injunction in Canon 4 of the Code of Professional Responsibility that "a lawyer should preserve the confidences and secrets of a client." Under DR 4-101, a lawyer may not knowingly reveal confidences or secrets of a client, except with the consent of the client affected, and then only after full disclosure.

Your inquiry gives no indication that your employer-client has consented to your proposed intervention. Moreover, we question whether an effective consent would be possible, inasmuch as such a consent only could be based upon a disclosure of all of the material ways in which your revelation of your knowledge of your client's employment practices would affect your client. We do not believe that such a disclosure can be made in advance of litigation, for it is impossible to predict ahead of time the course of the proceeding or the issues that will arise.

This Committee recently held that a lawyer in private practice who, as an employee of a corporation five years earlier, had handled workmen's compensation matters for the corporation, may not properly represent an employee in a workmen's compensation claim against the corporation, when the lawyer had worked on the corporation's defense of that claim. The New York State Bar Association's Ethics Committee also has ruled that a lawyer may not represent a purchaser in a contract dispute, when the contract had been drafted on behalf of the seller by the lawyer's former partner, even though the lawyer in fact did not know of his former partner's work on the matter (Opinion No. 180).

Even if somehow it would be possible for you not to divulge confidential information in the course of your intervention in the other female employee's suit, your intervention certainly might convey the appearance

of impropriety and that, too, is proscribed by the Code of Professional Responsibility (Canon 9). Judge Kaufman put it this way in his recent opinion in Emle Industries, Inc. v. Patentex, Inc., 478 F.2d 562, 571 (2d Cir. 1973):

> "The dynamics of litigation are far too subtle, the attorney's role in that process is far too critical, and the public's interest in the outcome is far too great to leave room for even the slightest doubt concerning the ethical propriety of a lawyer's representation in a given case. These considerations require application of a strict prophylactic rule to prevent any possibility, however slight, that confidential information acquired from a client during a previous relationship may subsequently be used to the client's disadvantage."

cf. Handelman v. Weiss, CCH Fed. Sec. L. Rep. ¶94,214 (S.D.N.Y. 1973) (because of the appearance of impropriety, a lawyer who had assisted the SIPC trustee in winding up the business affairs of a broker-dealer was disqualified from representing plaintiffs in a private damage action against the broker-dealer).

2. Further Prosecution of Your Own Claim. The same considerations lead us to believe that it would be improper for you to prosecute further your own claim of sex discrimination against your employer-client, unless your employer consents. Again, we question whether an effective consent is possible, given the need to disclose in advance of the litigation all the material ways in which your revelation of your client's employment practices would affect your client.

We recognize that your inquiry involves a confrontation of two conflicting policies: on the one hand, that employees be free to assert their rights against discrimination; on the other, that clients be free to confide in attorneys without fear that the attorneys will subsequently sue them on the basis of material disclosed to the attorneys in confidence.

**EXHIBIT D**

Your case resembles Richardson v. Hamilton International Corp., 333 F. Supp. 1049 (E.D.Pa. 1971), aff'd., 469 F.2d 1382 (3d Cir. 1972), cert. denied, 411 U.S. 986 (1973), in which an attorney who was a shareholder in Hamilton Life and who had done extensive legal work for Hamilton Life in 1964 and 1965 was disqualified from maintaining in his own name a class action and shareholders derivative action against Hamilton Life, its management, and its parent, Hamilton International, based on alleged deficiencies in a 1969 proxy statement with respect to the merger of Hamilton International and Hamilton Life.

Even though the legal work the attorney had done for Hamilton Life was not shown to be related to the attorney's suit, the court stated its belief that the attorney should not be permitted:

> ". . . to place himself in a position where, even unconsciously, he will be tempted, or it appears to the public and his former clients that he might be tempted, in the interests of his new client, to take advantage of information derived from confidences placed in him by Hamilton Life and its officials." 469 F.2d at 1385.

The court recognized that the attorney, as a shareholder of Hamilton Life, was entitled to the protections of the SEC's proxy rules, and that the policy of protecting shareholders was in conflict with the policy of protecting the confidences of clients. 469 F.2d 1386 n. 13.

Your case presents an even stronger ground for disqualification than does the Richardson case, because in Richardson the attorney had not represented his former client in a matter directly pertaining to his own complaint against the corporation. In your case, on the other hand, your prior representation of the corporation dealt specifically with sex discrimination, the very charge you now level at the corporation. As the court stated in Richardson,

EXHIBIT D

"A client should not fear that confidences conveyed to his attorney in one action will return to haunt him in a later one. It is readily apparent that if an attorney is permitted to reveal confidences 'the free flow of information from client to attorney, so vital to our system of justice, will be irreparably damaged'." 469 F.2d at 1384.

This reply is for your information only and is not for general publication.

Very truly yours,

Alvin H. Schulman
Chairman

**EXHIBIT D**

414 East 52nd Street
New York, N.Y. 10022

January 29, 1974

Mr. Alvin H. Schulman
Chairman
Committee on Professional & Judicial Ethics
Association of the Bar of the City of New York
42 West 44th Street
New York, N.Y. 10036

Dear Mr. Schulman:

I would like your Committee's opinion regarding my professional responsibilities with regard to the following matter:

I am employed as an Associate General Counsel in the New York offices of a large corporation. The lawyers in that office serve as counsel to the corporation and to its several independently-managed operating divisions. In February of 1973 I was assigned in part, secondary responsibility for employment discrimination actions against the corporation and its divisions and in that connection I began to work on an on-going case of a female employee of one of the divisions who had filed charges of sex discrimination against the corporation and the division with Federal and State agencies. In August of 1973 I changed departments within the general counsel's office and since then have had no further responsibility for that employee's case. Since that time, the employee has filed a sex discrimination action in the United States District Court for the Southern District of New York.

During the six months that I worked on that case I studied the general regulations of the Equal Employment Opportunities Commission, its procedures and the law on sex discrimination generally. I obtained specific information from the personnel department of the division concerning salaries and hiring practices. I attended on interview of the employee's superior, and attended one interview of another division employee. I participated in a conference with outside consultants hired by the corporation to prepare statistical information regarding employment within the division. I obtained inter-office memoranda and prepared a memorandum myself regarding the case.

**EXHIBIT D**



I am no longer in possession of any documents pertaining to the division's hiring, promotion or salary policies or regarding any facts pertaining to the employee's case. I have never seen the report prepared by the outside consultants regarding employment in the division. I do have a general recollection of conversations which I had with employees in the division and I have formed a general impression regarding the employee's case.

On November 15, 1973 I filed a charge of sex discrimination with the Equal Employment Opportunities Commission against the corporation and subsequently notified the corporation of my complaint. I now intend to intervene in the other female's pending federal action.

I am concerned about my professional responsibilities to the corporation and to the division and I seek an opinion from your Committee elucidating those responsibilities under the Code of Professional Responsibility. I am hopeful that your Committee would be able to suggest general guidelines for my conduct and participation in this litigation as well as for my relationship with the other plaintiff and with my attorneys (who are also her attorneys).

I would be happy to meet with your Committee to discuss this further if you require any additional information and would appreciate a statement from your Committee as soon as possible regarding this matter. Thank you very much for your attention.

Sincerely,

Donata A. Delulio

## AFFIDAVIT OF ROBERT A. LONGMAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - - X

JOAN HULL, on behalf of herself and others similarly situated,

Plaintiffs,

- against -

CELANESE CORPORATION; CELANESE FIBERS MARKETING CO.; JOHN W. BROOKS, VERNON E. JORDAN, GRAYSON M-P. MURPHY, Officers and Directors of Celanese Corporation and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO.,

Defendants.
- - - - - - - - - - - - - - - - - - - X

AFFIDAVIT

73 CIV. 3725

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK )

ROBERT A. LONGMAN, being duly sworn, deposes and says:

1. I am Vice-President, Secretary and General Counsel of Celanese Corporation. As such, I head the Celanese Law Department, of which Donata A. Delulio ("Delulio") is a member. I was a member of the Celanese Law Department from September 11, 1961 to February 28, 1972, at which time I left to become Vice-President, Secretary and General Counsel of Worthington Corporation. I returned to Celanese in January 1974.

2. In December 1973, following the announcement of my return to Celanese, I met with James Scott Hill, the then Vice-President, Secretary and General Counsel, to review matters rela-

ting to the Celanese Law Department. He advised me that, in his judgment, Delulio's work product and judgment did not meet the standards of the Law Department. Similar concern was expressed by two senior members of the Law Department with whom I met separately in December 1973. Notwithstanding the reservations that were expressed to me about Delulio's work product and judgment, I determined that it was my responsibility to make my own appraisal of Delulio's work. At that time, we were not aware that Delulio had filed charges with the EEOC on November 15, 1973. In late December, I was informed that Delulio had written to Mr. Hill on December 19 informing him that she had filed charges and stating that she "may wish to intervene in the Hull case". A copy of that letter is annexed hereto as Exhibit A.

3. After I joined Celanese, I suggested to Delulio that we meet to review her grievances. Delulio and her attorney lunched with me on January 7. Delulio outlined to me the allegations of her claim of sex discrimination, most of which appear in her affidavit of February 28, 1974 in support of her motion to intervene. I suggested that it appeared to me that anyone who knew all of the people and the situation at the Celanese Law Department during the period she complained about would say that nothing which had occurred to Delulio was based on the fact that she was a woman. I said that I hoped very much that some solution could be found because I could see that the question of Delulio's ability and comportment as an attorney would be an issue in the

case, thus potentially necessitating testimony about her work. I was then accused of threatening her.

4. I was troubled by Delulio's statement in her letter of December 19, 1973 that she might intervene in the Hull case. Approximately one day after our luncheon, I had another discussion with Delulio about what seemed to me to be a conflict of interest on her part. I said that in my judgment, inasmuch as she had represented Celanese in the Hull case, a real conflict would be presented if she gave advice to Hull, or gave her views on the pending litigation, its outcome or implications to any person not directly involved in the matter. Moreover, there would be a definite conflict if she participated in any way on the plaintiff's side of the Hull case. I said that I left to Delulio the question of whether (having in mind her position as an attorney for the company) she could or should properly discuss her own individual claim with others in the company not associated with Hull. While I believed that there were problems in such a discussion, I would leave it to Delulio to conduct herself properly. Shortly thereafter I was told by Everett W. Kramer, Associate General Counsel of Celanese, that Delulio had told him that she was not intervening in the Hull case.

5. On March 8, 1974, it became apparent that Delulio and Hull were associated in some manner. On that date Delulio appeared in my office to complain about alleged harassment and retaliation. I informed her that I would look into the facts of

her complaint, which proved to be unfounded. I noted that Delulio was accompanied by Joan Hull. Since the matter under discussion in no way concerned Hull, I asked her why she was present. Hull responded that she was present "as a witness".

6. On March 11, 1974, I again advised Delulio that it was my judgment that a conflict of interest would be presented if she were to intervene in the proceedings instituted by Joan Hull and also advised her that, in my judgment, a conflict of interest would be presented if she were to employ Joan Hull's attorneys as her attorneys, since she had previously participated in the defense of the proceedings instituted by Joan Hull.

Robert A. Longman
ROBERT A. LONGMAN

Sworn to before me this 25th day of March, 1974

Maureen H. Wilson

MAUREEN H. WILSON
Notary Public, State of New York
No. 24-9007135
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1974

EXHIBIT A, ANNEXED TO FOREGOING AFFIDAVIT

Letter to James Scott Hill from Donata Delulio, dated December 19, 1973

**EXHIBIT A**

414 East 52nd Street
New York, New York 10022
December 19, 1973

James Scott Hill, Esq.
General Counsel
Celanese Corporation
522 Fifth Avenue
New York, New York

Dear Jim:

At the annual Christmas luncheon on Monday, December 17th, I was sitting next to Gil Edelson of Rosenman, Colin, Kaye, Petschek, Freund & Emil. He made some very general references to Joan Hull's present case against Celanese. Although I am not a participant in that action, it is only fair that you be advised, if you have not already received formal notification, that I have filed charges with the Equal Employment Opportunity Commission against Celanese alleging sex discrimination in employment opportunities and that I may wish to intervene in the Hull case. I have been notified by the EEOC that the complaint in my case has been referred to the New York State Division of Human Rights.

This complaint will not interefere in any way with my continued ability to perform my present responsibilities at Celanese which do not include work on this type of case. I look forward to a time when this matter can be fairly and amicably resolved.

Sincerely,

Donata A. Delulio

## AFFIDAVIT OF LLOYD E. SIMS, JR.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - -x

JOAN HULL, on behalf of herself and others similarly situated,

Plaintiffs,

-against-

CELANESE CORPORATION; CELANESE FIBERS MARKETING CO.; JOHN W. BROOKS, VERNON E. JORDAN, GRAYSON M-P MURPHY and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO.,

Defendants.

AFFIDAVIT

73 CIV. 3725 (RO)

- - - - - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK )
COUNTY OF NEW YORK ) ss.:

LLOYD E. SIMS, JR., being duly sworn, deposes and says:

1. I am Personnel Manager, New York, for Celanese Fibers Marketing Company ("CFMC"), a division of Celanese Corporation ("Celanese") and have held that position since on or about July 1972.

2. On or about November 29, 1972, Joan Hull, the plaintiff in this case, filed charges with the New York State Division of Human Rights against Celanese, CFMC and certain individuals, in which she claimed that she had been discriminated against because of her sex. At or about that time, I and my immediate superior, Ronald Wright, Director

of Personnel for CFTC, became actively involved in the defense of those charges and, subsequently, other charges made by Hull, including this action. At that time the company was represented by outside counsel and by Robert Ciovacco of the Celanese Law Department.

3. At or about the end of February 1973, we were informed that Mr. Ciovacco would be leaving Celanese and that Donata A. Delulio of the Celanese Law Department would replace him on the Hull matter. For a brief period of time, both Ciovacco and Delulio represented the company in the matter. Thereafter, and until the beginning of October 1973, Delulio acted as one of the company's attorneys in the Hull matter as well as in related matters.

4. Among the activities which Delulio engaged in as our attorney in the Hull matter, were the following:

(a) She participated actively in the defense of the Hull case before the State Division of Human Rights. We consulted with her extensively on a proposed conciliation agreement, which she helped to prepare and submit. When Hull refused to enter into a conciliation agreement, a finding of probable cause issued. On Celanese's behalf, Delulio then prepared and submitted to the Human Rights Appeal Bureau, an appeal from that finding. A copy of that appeal is annexed hereto as Exhibit A.

(b) I supplied Delulio at her request with my files relating to the Hull case. Those files, which were extensive, contained considerable confidential information.

She removed the files to her office where she studied the documents over a considerable period of time before returning them. I understand that she made copies of some of those documents.

(c) After Hull filed her complaint in this case in August 1973, Delulio participated actively in planning the defense. I recall attending meetings with her, other executives of the company and counsel, at which the facts and proposed defense strategy were discussed at length.

(d) In addition, Delulio was present and participated in meetings at which prospective witnesses in the case were interviewed. Specifically, she had a number of conversations with Robert Wylie, CFMC's Vice-President, Merchandising. I am informed that Hull has charged Wylie with specific acts of discrimination against her. Delulio was present when Wylie consulted with counsel on this matter and, indeed, acted as one of his lawyers.

5. Delulio advised us that she was CFMC's lawyer on matters relating to equal opportunity and discrimination, and that we should feel free to discuss with her all such matters. From March to October 1973, Delulio advised us on such matters as our affirmative action program and the retention of outside experts to assist us in such a program.

6. In the Spring of 1973, a long standing dispute between Marilyn Karnes and a number of her superiors reemerged. This dispute is now the subject of certain of the

allegations of Karnes' complaint and affidavit which, of course, reflect only her version of the facts. At that time Mr. Wright and I consulted Delulio on the matter. She reviewed the entire situation with us, participated in discussions with us and with others named by Karnes as allegedly discriminating against her and advised us with respect to certain of the actions which are now the subject of Karnes' complaint.

7. In addition to the foregoing, I have had many informal conversations with Delulio about the Hull case and related matters, such as affirmative action programs and the company's position with respect to women. Because she was our lawyer, I felt free to be completely candid and to make full disclosure of relevant information, and my personal views. I am now shocked to find our lawyer in a position where she can use this information against Celanese and CFMC in the same litigation and with respect to the same matters in which she advised and defended us.

Lloyd E. Sims, Jr.
LLOYD E. SIMS, JR.

Sworn to before me this
27th day of March, 1974

J. Dolores Mezzacappa
Notary Public, State of New York
No. 30-4617775
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1974

EXHIBIT A, ANNEXED TO FOREGOING AFFIDAVIT

Letter to the Human Rights Appeal Board

State of New York from Donata Delulio,

dated April 9, 1973

**EXHIBIT A**

CELANESE

OFFICE OF
GENERAL COUNSEL

April 9, 1973
DAD-73-211

BY HAND

Human Rights Appeal Board
State of New York
250 Broadway - 11th Floor
New York, New York

Attention: Lloyd L. Hurst, Chairman

Re: Joan Hull vs. Celanese Corporation, et al
Case # NB-CFS-1297-72

Gentlemen:

Celanese Corporation, Respondent in the above-noted case, hereby appeals the determination of the New York State Division of Human Rights finding probable cause in this matter and recommending proceeding to a public hearing.

Said appeal is made under the provisions of Section 297-a, 6(c) of the Human Rights Law, as amended through July 6, 1971, of the State of New York.

Very truly yours,

Donata A. Delulio
Attorney

/lm

bcc: Mr. B. Sims
Mr. R. Wright
E. W. Kramer, Esq.

Richard Adelman, Esq.
Messrs. Battle, Fowler, Stokes & Kheel

CELANESE CORPORATION • 522 FIFTH AVENUE, NEW YORK, N.Y. 10036 • TELEPHONE (212) 867-0200

EXHIBIT A

## AFFIDAVIT OF BENJAMIN H. SANDS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - - - - - x

JOAN HULL, on behalf of herself and others similarly situated,

Plaintiffs,

- against -

CELANESE CORPORATION; CELANESE FIBERS MARKETING CO.; JOHN W. BROOKS, VERNON E. JORDAN, GRAYSON M. P. MURPHY and DR. JEROME B. WIESNER, Officers and Directors of Celanese Corporation and ALIAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO.,

Defendants.
- - - - - - - - - - - - - - - - - - - - - - x

AFFIDAVIT

73 CIV. 3725

STATE OF NEW YORK )
COUNTY OF NEW YORK ) ss.:

BENJAMIN H. SANDS, being duly sworn, deposes and says:

1. I am, and at all relevant times herein have been, Director of Minority Relations for the defendant Celanese Corporation ("Celanese"). My responsibilities are in the area of compliance with laws and regulations respecting equal opportunity and discrimination, including Title VII of the Civil Rights Act of 1964. Among other things, I gave advice and counsel to appropriate managerial personnel in the various divisions of the company on such matters as individual complaints of discrimination, overall affirmative action programs and related matters.

2. Because I must deal with statutes, regulations, governmental bodies and officials and individual

lawsuits, I have a constant need for legal advice. Consequently, the Celanese Law Department has always assigned a lawyer whose responsibility, among others, is to advise me and members of my department.

3. In February 1973, Robert Ciovacco, the lawyer who had been assigned to my department, left the company. I was informed by the Celanese Law Department that Donata A. Delulio would assume Ciovacco's responsibilities with respect to my department, and that I should seek her advice on all matters within the area of my responsibility, except those relating to unions and seniority, with which she had had no experience. Delulio told me that she was Celanese's "equal opportunity" lawyer and asked me to keep her fully informed on all matters relating to equal opportunity and allegations of discrimination. I complied with that request.

4. During 1973, among other matters, Delulio and I discussed at great length the case brought by Joan Hull against Celanese. Delulio played an active role on Celanese's behalf in that case until October 1973. In or about June of 1973, Delulio told me that she was preparing a complete analysis of Celanese's position in the case, which she called "a white paper". I discussed with her the history of the case, my knowledge of the facts relating to the allegations in the case and my opinion with respect to those allegations. I instructed the members of my department to give Delulio complete cooperation, which they did. At her request I

supplied her with copies of numerous documents and gave her complete access to my department's files, from which documents were removed and copied for her.

5. The Hull complaint alleges that in or about June 1972, Celanese and CFMC made a substantial reduction in personnel. It is further alleged that a disproportionate number of women were discharged because of sex discrimination. I recall discussing those allegations with Delulio and reviewing the facts in detail. Among other matters, we reviewed the facts with respect to the termination of Jacquelyn Keely. I am now informed that Keely now claims that she was terminated because of sex discrimination, and has moved to intervene in the Hull case.

6. In addition to the foregoing, I recall attending a number of meetings with Delulio, outside counsel and others at which the facts of the Hull case, defense strategy and the possible testimony of witnesses was discussed. At each such meeting Delulio was present as our lawyer and participated actively in the discussions.

7. At all times from in or about March 1973 to October 1973, while Delulio was acting as an attorney advising me and my department, I turned to her frequently for advice and consultation. I and other members of my department made full and candid disclosure of matters relating to equal opportunity throughout Celanese including the company's present and proposed policies and practices. Delulio, who

had complete access to our files, was supplied with many documents. There is little doubt in my mind that Delulio acquired comprehensive knowledge and considerable confidential information with respect to the matters at issue in this case.

BENJAMIN H. SANDS

Sworn to before me this
20th day of March, 1974

DOROTHY V. WILLIS
Notary Public, State of New York
No. 41-[illegible] Queens County
Certificate filed in New York County
Term Expires March 30, 1974

## AFFIDAVIT OF JOHN J. RYAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - - x

JOAN HULL, on behalf of herself and others similarly situated,

Plaintiffs,

- against -

CELANESE CORPORATION; CELANESE FIBERS MARKETING CO.; JOHN W. BROOKS, VERNON E. JORDAN, GRAYSON M.P. MURPHY and DR. JEROME B. WIESNER, Officers and Directors of Celanese Corporation and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO.,

Defendants.

AFFIDAVIT

73 CIV. 3725

- - - - - - - - - - - - - - - - - - - x

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK )

JOHN J. RYAN, being duly sworn, deposes and says:

1. I am Assistant Treasurer of Celanese Corporation and have held that position since 1970. I have been with the company since 1962.

2. At some time shortly after January 20, 1974, I had a conversation with Ann B. Arnold, Real Estate Administrator of Celanese Corporation, who told me the following:

Ms. Arnold had been approached by Donata A. Delulio, who asked her if she would consider joining in Delulio's law suit against Celanese. Ms. Delulio stated that about nine employees were involved in the suit. Ms. Arnold replied that she had nothing to complain about and was therefore unwilling to join in the suit. Later, Ms. Arnold was asked by another female employee whether she was involved in the suit and replied that she was not.

**Affidavit of John J. Ryan**

3. On or about February 12, 1974, Ms. Arnold came to me again. She told me that Delulio had called her that morning and asked her if she could get information on the pension plan. Ms. Delulio said that one of the girls felt the pension plan discriminated against females. Ms. Arnold said that she told Delulio that she would not know where to look or what to look for and, in any event, would not go through my files without my permission. She suggested that if Delulio wanted information on the pension plan to call me directly about this matter. Delulio stated that she did not want to do that.

4. Before I signed this affidavit, I reviewed a draft of it with Ms. Arnold,and she affirmed to me that the statements made herein are accurate.

JOHN J. RYAN

Sworn to before me this

21st day of March, 1974

Notary Public

No. [illegible]
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 19__

J. DAVID Mc CALMONT
Notary Public, State of New York
No. 60 7732205
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 19__

**AFFIDAVIT OF DOUGLAS E. NEMENS**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - - -x

JOAN HULL, on behalf of herself and others similarly situated,

Plaintiffs,

-against-

CELANESE CORPORATION; CELANESE FIBERS MARKETING CO.; JOHN W. BROOKS, VERNON E. JORDAN, GRAYSON M-P MURPHY and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION; and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO.,

Defendants.

- - - - - - - - - - - - - - - - - - - - - - - -x

AFFIDAVIT

73 CIV. 3725 (RO)

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK )

DOUGLAS E. NEMENS, being duly sworn, deposes and says:

1. I am Controller of Celanese Real Estate Development Corporation, a wholly-owned subsidiary of Celanese Corporation. I know Donata A. Delulio ("Delulio") of the Celanese Law Department who, I am informed, has moved to intervene in this action as a plaintiff.

2. Delulio first told me in late December of 1973 that she had filed charges of sex discrimination against Celanese. Thereafter, in or about January and February of 1974, Delulio told me that she expected to make a considerable amount of money from her law suit, and that this would enable her to purchase an expensive cooperative apartment in Manhattan. Delulio mentioned her intended law

suit on several occasions. On each such occasion the conversation was initiated by her and not by me since I have no real interest in the matter

3. Delulio also told me in January or February that Irene Barrett, who works in my department, had refused to join her suit.

Douglas E. Nemens
DOUGLAS E. NEMENS

Sworn to before me this
22d day of March, 1974

J. David McCalmont

J. DAVID McCALMONT
Notary Public, State of New York
No. 60-7[illegible]66
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 1974

**AFFIDAVIT OF RALPH J. HOBART**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| JOAN HULL, on behalf of herself and others similarly situated, Plaintiffs, -against- CELANESE CORPORATION; CELANESE FIBERS MARKETING CO.; JOHN W. BROOKS, VERNON E. JORDAN, GRAYSON M-P MURPHY and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION; and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO., Defendants. | AFFIDAVIT 73 CIV. 3725 (RO) |

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK )

RALPH J. HOBART, being duly sworn, deposes and says:

1. I am Vice-President of Operations of Celanese Real Estate Development Corporation, a wholly-owned subsidiary of Celanese Corporation. I am acquainted with Donata A. Delulio ("Delulio") who, I understand, has moved to intervene in this case as a plaintiff.

2. Delulio told me on a number of occasions that she intended to sue Celanese. On most such occasions, the subject was raised by her, and not by me.

3. I am also acquainted with Irene Barrett, who works in my department. She has told me that she was asked by

## Affidavit of Ralph J. Hobart

Delulio to join in an action against Celanese based upon a claim of sex discrimination, but refused to do so.

Ralph J. Hobart
RALPH J. HOBART

Sworn to before me this
22d day of March, 1974

J. David McCalmont

J. DAVID McCALMONT
Notary Public, State of New York
No. 60 7792265
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 1974

# AFFIDAVIT OF DONATA A. DELULIO

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | | |
|---|---|---|
| JOAN HULL, on behalf of herself and other similarly situated, Plaintiffs, | : | |
| -against- | : | 73 Civ. 3725 (RO) |
| CELANESE CORPORATION, CELANESE FIBERS MARKETING CO., JOHN W. BROOKS, VERNON E. JORDAN, GRANSON M-P MURPHY and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION, and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO., Defendants. | : | AFFIDAVIT |

STATE OF NEW YORK )
SS.:
COUNTY OF NEW YORK)

DONATA DELULIO, being duly sworn, deposes and says:

This affidavit is made in opposition to a motion by defendants to deny my motion to intervene in this action and for other related relief.

## I. Preliminary Statement

A few things should be made clear at the outset. I am not the lawyer for plaintiff or any of the proposed

intervenors. I am, myself, a proposed intervenor and plaintiff, and I am represented by independent counsel, who performs all the functions normally performed by attorneys. I do not give legal advice either to the plaintiff Hull or to any of the proposed intervenors, nor do I anticipate that I will occupy any role in this case other than that of a plaintiff. Despite defendants' efforts to confuse the situation, this action must be viewed as one in which a lawyer is suing her corporate employer, and not as one in which a lawyer is representing a client in a suit against a former client, the situation in most conflict cases. The distinction is an important one. It does a lawyer, qua lawyer, no great injury if she is barred from acting as such in a specific case because of a conflict of interest. There are always other cases. But it does do me incalculable and irreparable harm if I, as a female employee, am denied the opportunity to enforce crucial rights given to me by statute and the Constitution.

I have never disclosed any confidential information either to the plaintiff in this action or to her attorneys or to anyone else. Rule 4-101 of the Code of Professional Responsibility defines "confidence" and "secrets" as follows:

> "(a) 'Confidence' refers to information protected by the attorney-client privilege under applicable law, and 'secret' refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would likely to be detrimental to the client."

Using that definition, I have certainly never had access to any information which might come within the definition of "secret" as will be apparent in view of the nature and limited scope of the work I performed.

It is possible that I might have evidence that would be protected by the attorney-client privilege, although given the present situation it is doubtful that it would have any weight. I have expressed my opinion as to whether or not Celanese was in compliance with the law. Such communications to my client would probably be protected by the attorney-client privilege and I would not be permitted to testify as to such statements; neither do I propose to disclose to anyone the nature of such opinion. However, under the present circumstances, this would not appear an important consideration since I have in my complaint asserted my belief that the com-

pany is in violation of the law, based, not on any confidential or secret information I received during my employment as an attorney, but rather based upon my own experience and observation as an employee of the company.

In any event, I have from the beginning leaned over backwards to avoid any disclosure or conduct which might arguably be termed improper. I have never had occasion to discuss with counsel or anyone else the substance of work I did on the Hull case and I can see no circumstances in which such discussion would take place.

It is true, of course, that I have been concerned from the outset about my status as a member of the corporate legal staff. It was for that reason that on January 29, 1973, I wrote to the Committee on Professional and Judicial Ethics of the Bar Association to seek advice as to how I might conduct myself in the prosecution of my legal rights and what guidelines I should follow to protect whatever rights defendants might have. The response that I received did not provide guidelines, but instead came to the conclusion that I could not sue at all. I believe the response was based on a misunderstanding of the facts and a misconception of the

law and accordingly I am requesting, through my attorneys, that the Committee reconsider its position on the basis of a more complete statement of the facts and the law. But, in any event, I cannot permit a Committee of the Bar Association to deprive me of the rights which I have, in common with all others, to enforce my constitutional rights through resort to the courts. I am prepared to accept the guidance of senior members of the bar as to restrictions on my disclosure of arguably confidential information, but I cannot accept a decision, even from a bar association committee, that I must surrender my legal rights.

To bar me from suing defendant will mean that Title VII of the Civil Rights Act of 1964 offers no protection to me against unlawful discrimination. Since every Title VII action is against an employer, it will mean that lawyers alone will be denied statutory or other protection against discrimination based on race, sex, national origin or similar improper considerations.

The defendants have submitted seven affidavits on this motion and I shall respond to them in as much detail as appears to be necessary. But before making a specific response to the affidavits, a statement of my activities in connection with the Hull case seems appropriate:

II. Legal Responsibilities While Employed At Celanese.

The attorney at Celanese in charge of labor, personnel and employment problems and, therefore, the person primarily in charge of the Hull case in house, is Everett W. Kramer; he, however, has not submitted an affidavit in this matter and his name is mentioned only once in all of the papers submitted in support of the motion. At all times, the principal burden of handling the Hull case has been on retained outside counsel, at first the firm of Battle, Fowler, Stokes & Kheel and later Rosenman, Colin, Kaye, Petschek, Freund & Emil.

An effort is made throughout the defendants' affidavits to make it appear that I spent a great deal of time on the Hull case or related matters. Nothing could be farther from the truth. A very generous estimate of the amount of time I spent on the case in the seven months between February and September, 1973, would be forty hours. My best recollection of my participation in the Hull case is as follows:

In February, 1973, my formally assigned responsi-

bilities were legal representation of half of the Chemical group and all environmental matters. That month Robert Ciovacco, another attorney on the general counsel's staff, left Celanese. He was an attorney assigned to the Fibers group with some responsibility, in house, for the Hull matter. Prior to his departure, I believe I met with Ciovacco, Ed Sims (Personnel Manager of Celanese Fibers Marketing Co.) and Richard Adelman, outside counsel with Battle, Fowler, Stokes & Kheel, for about fifteen minutes. I believe Ciovacco invited me to sit in on this meeting, at which nothing substantive was discussed, because I had previously expressed an interest in sex discrimination law generally.

I believe that in the month of March, I had two telephone conversations with Adelman in which I inquired about the status of the Hull case pending before the State Commission. Basically, Adelman brushed off my inquiries and gave me no substantive information.

Also that month, I believe Celanese received notice of the fact that Hull had filed a complaint with the Equal Employment Opportunity Commission. Everett W. Kramer, the

attorney in charge of the Hull case, asked me to do research on the procedure to be followed in responding to this notice, if necessary. I did a minimal amount of research on Title VII, one half hour at most, and reported orally to Kramer.

In the beginning of April, I recall that I sat in on a meeting with James Scott Hill (Vice President and General Counsel), Sims and Ronald Wright (Director of Personnel for Celanese Fibers Marketing Co.), to discuss our relations with outside counsel. This was precipitated by our experience with them on the Hull case but did not deal substantively with that matter. The meeting probably lasted ten to fifteen minutes. I later sent Kramer a memo on this meeting.

Also, in or about April, I was shown a proposed conciliation agreement for the Hull case. I proposed a few grammatical and stylistic changes but had no part in negotiating or formulating the substantive aspects of that proposal.

In April, after we had been notified by the State Division of its finding of probable cause in the Hull case, Kramer asked me again to determine whether, as a procedural matter, we could appeal this finding. I read the statute and prepared a notice of appeal. I telephoned the Commission's

Clerk to find out where to mail the notice and sent it out. The Commission responded and I sent a memo to Kramer on the appealability of the order. Altogether I could not have spent more than an hour on this work. The affidavit of Sims has attached to it the notice of appeal, signed by me to the Human Rights Appeal Board, which is cited both by Sims and by Edelson as proof that I was playing an important role in that case. The court, of course, will recognize the notice of appeal as a form which any first year law student could copy out of a form book. I do not recall why I signed the notice of appeal. Under normal circumstances, Kramer would have signed it; I may have done so in this case because he was out of the office or otherwise unavailable. It was purely a pro forma act on my part and had nothing to do with confidential or secret material.

In mid-April, I attended a short, fifteen-minute meeting attended by Adelman, Sid Brochman (of the Minority Relations Department), Sims and Wright to have Adelman bring us up to date on the posture of the Hull case. He was uninformative and nothing of substance was discussed at this meeting.

I also had lunch with Sims to introduce him to an acquaintance of mine who was engaged in consulting work on equal employment matters. There was a general discussion, unrelated to Hull, of the services which her firm could perform for Celanese.

In May, Wright asked me whether I could assume any responsibility on the Hull case and I informed him that I could not because I was not assigned to the case. I did offer to try to arrange a luncheon meeting with attorneys to discuss his problems. However, no such meeting took place.

In June, 1973, I was assigned secondary responsibility, under Kramer, for law department representation of the personnel department. This assignment would, theoretically, have involved me more actively on the Hull case; however, as I retained my assignments to the Chemical group and all environmental matters and took on added assignments in purchasing and traffic, I had very little time to devote to personnel.

By June, 1973, I had learned of the Celanese offer of employment to a Canadian attorney, for a position on the General Counsel's staff assigned to the Fibers group, (the position which I had been promised), at a salary of $8,000.00

greater than my own. This information, as well as other incidents, described more fully in my affidavit in support of intervention, led me to conclude I was being discriminated against by Celanese. Hill learned that I had heard of this offer and that same month I had a short meeting with Hill in which he asked me about my own complaints. There wasn't adequate time to discuss the matter and I expressed a general opinion regarding the treatment of women at Celanese. He asked me to do a memo on the Hull case, as a reflection of Celanese's method of handling such matters and I agreed to do so. I spent no more than twelve hours preparing a memorandum which was comprised of a chronological statement of the events leading up to and surrounding the Hull case; a compilation of formal papers before the State Commission, a two-page fact memo from Adelman, a policy statement contained in an Annual Report; a copy of a portion of a magazine article; copies of memos from Sims stating the events which transpired at the State hearings; and a copy of a letter from Hull. I made some general observations and suggested alternatives for dealing with the Hull case. I do not believe that there is anything confidential in this memorandum, but, consistent with the policy I have adopted, I have never discussed the contents of

the memorandum with Hull or other applicants for intervention or counsel and I shall not do so. I assume that the memorandum can be made available to the court for its inspection and evaluation, if necessary.

Toward the end of July, I was told that a consulting firm had been hired to review the Celanese minority employment picture and I sat in on a briefing of the consultants, which eight to ten people attended. I believe Kramer and myself were the only lawyers. The discussion had no connection with Hull.

After Hull's federal action was filed, I recall a short meeting with Wright, Sims and Hill to introduce us to Edelson of the Rosenman firm who, we were told, would be handling the case. He was given a copy of my memo as background. Again, nothing of substance was discussed.

In August I received a memo from Hill stating the Rosenman firm had been retained as counsel in the Hull case, and that Kramer would be in charge of the matter in house. During this time, I read a copy of the Hull complaint and I had two conversations with Edelson relating to entirely peripheral aspects of the case. At the end of August, I sat in on a meeting at which outside consultants discussed equal

employment problems generally with Robert Wylie, Vice President of Merchandising for Celanese Fibers Marketing Co. Wright, Sims and Edelson were present. I recall no specific reference to Hull.

My last activity regarding the Hull case took place September 4th when I requested a list of documents relating to Hull, as well as personnel procedures and policies generally. These were never sent to me. I did nothing more on the case. I did not see the Company's answer to the complaint or any other papers. I was not thereafter invited to any meetings dealing with the Hull case.

The bulk of my work during the period from February to September, 1973 was concentrated primarily in the chemical and environmental areas. As such, I represented, in a legal capacity, half the Celanese Chemical Company, handling all corporate, contract and anti-trust matters which arose within the group, as well as any other miscellaneous items requiring legal assistance. I estimate that at least sixty percent of my time was devoted at all times to the Chemical group.

In this connection, I helped negotiate, draft, review and/or otherwise monitor eighty to one hundred large sales

contracts to major U.S. corporations, and wrote or reviewed numerous licensing and consulting agreements for the Chemical group. I prepared and submitted a petition for issuance of emergency temporary standards to the Department of Labor regarding our Beta-propiolactone production, an allegedly carcinogenic substance. This complex matter, and subsequent meetings occupied in excess of half a month's work during this period.

I assisted in the redrafting of the Chemical group's standard sales contract. I prepared and delivered a talk on Robinson-Patman procedures for the Chemical Company at its spring sales conference. I also coordinated allocation procedures for accounts under my supervision. All Chemical company commercial hazards meetings were assigned to me, and I both reported at them and approved minutes of the meetings.

I handled the Mandell litigation for the Plastics Company, without assistance from either outside or other Celanese counsel. I also worked on the Celanese litigation involving our Texas plants and coordinated representation with Texas counsel.

My responsibilities in the Chemical group also included acting as legal counsel to our agricultural products unit. I drafted, negotiated and otherwise oversaw contracts, leases and consulting agreements too numerous and varied to detail. Finally, I worked closely with our Washington, D.C. office in reviewing pending legislation affecting the Chemical industry.

Celanese has over forty manufacturing plants and until October I was solely responsible for every legal aspect concerning environmental matters for all the plants. This involved not only advising plant managers and environmental superintendents relative to the law and regulations, but drafting and/or reviewing voluminous amounts of correspondence, and reports concerning petitions for air and water permits for each plant, notification of and compliance with changing regulations, and coordination with our Washington, D.C. office and officials of the Environmental Protection Agency. In order to keep current on regulations, I visited plants, attended status review sessions for each operating group, and actively participated on the Joint Subcommittee on Environmental Law of the Manufacturing Chemists Association, of which I am

a member. I estimate that environmental matters consumed twenty-five percent of my time.

As of June 1, 1973, I assumed responsibility for the corporate Purchasing group, and from June until October handled all purchasing contracts for the group, which annually accounts for $750,000,000 in purchase dollars. I estimate that this work took approximately ten percent of my time.

During the period of June through September I also was assigned several research projects, after which I prepared extensive memoranda; I worked on an anti-trust project regarding reciprocal selling arrangements and a major contract problem. Both were long and involved projects.

My remaining time was spent on miscellaneous matters, including work for the Traffic Department, my limited participation in the Hull case and other personnel-related items, and in assisting other attorneys who were on vacation, or otherwise in need of assistance.

During this same period of time I travelled extensively, both for business purposes and for vacation. Much of my time away from the office was involved in review-

ing the environmental status of all Celanese plants, attending a five-day environmental conference in Dallas, Texas, and a three-day meeting of the Chemical company in Sky Top, Pennsylvania. I made numerous trips to Washington, D.C. and was out of the office for three weeks on vacation. In total, I was away from head office in excess of thirty percent of all working days during the period in question.

## III. Defendants' Affidavits

A line by line response to the affidavits submitted by the defendants on this motion would be tedious and it is doubtful as to whether it would be of great value to the court. I shall, therefore, address myself to some of the more salient points made by the defendants, it being understood that my failure to respond to every allegation in those affidavits is not to be taken as an agreement with them.

### A. Edelson Affidavit

The affidavit of Edelson is almost entirely hearsay although he attempts to suggest that it is more than that. The affidavit is hopelessly inaccurate. In those few instances where his remarks are not plainly untrue, he has

carried out his obvious purpose of misrepresenting my work on the Hull case by distorting the facts or by drawing unsupported inferences from his false statements. He had no connection with the case until early August and my connection with the matter ended about a month later, so that his personal knowledge of my activities covers a period of no more than four to six weeks. Still a few observations should be made.

In paragraph 10., Edelson states that I was assigned in February, 1973, to "represent" Celanese in the Hull matter, and in paragraph 2., that I acted as defense counsel. Edelson has no personal knowledge of my activities at that time, and his statements are false. In fact, when Edelson did become involved in Hull, he was advised by Hill that he would be working with Kramer on the case. In paragraph 11. of his affidavit, Mr. Edelson summarizes my activities even though he had no personal knowledge of the facts he sets forth. As noted above, the only connection I had with Hull's proceeding before the New York State Human Rights Division was my minimal activities with respect to reviewing the conciliation agreement and submitting the notice of appeal.

During the months that I had some connection with the Hull case, I had no access to salary scales, evaluations,

promotion data, testing results or any other similar material which would be relevant in defending the company against discrimination charges made against the Corporation by Hull or anyone else. Edelson's description of my activities on the Hull case is, to use a short and ugly word, a baldfaced lie. I did not attend a single meeting at the Division of Human Rights and never consulted with corporate officials with respect to a defense to that or any other discrimination proceeding. I never conducted any interviews in the Hull case nor did I review the 1972 personnel reduction. Finally, although I did sit next to Mr. Edelson at the 1973 Christmas luncheon, we did not discuss the Hull case. Many other attorneys were present and the conversation was social and not related to business.

B. Sands Affidavit

The affidavit of Sands alleges that I told him that I was Celanese's "equal opportunity" lawyer. I never made any such statement and it was not true.

Sands is quite inaccurate in paragraph 4. of his affidavit. I never discussed "at great length" the Hull case with Sands. If he had any significant responsibility in con-

nection with that case I did not know it. I never told him that I was preparing a complete analysis of Celanese's position in the case and I was not in fact doing any such thing. I never referred to anything as "a white paper" - that term is not part of my regular vocabulary and I am not quite sure as to what it means. He never supplied me with any documents from his department and I had no access to the department files. I never requested any information from him except for a summary of the EEO-1 figures. The EEO-1 form is a form filed with the Office of Equal Employment Opportunity by large industrial firms relating to the composition of the work force with respect to color, sex, racial origin, etc. The document itself is not in any respect secret. It is a public record and is available on request to any of the 48,000 stockholders of Celanese.

I never discussed the Hull complaint with Sands or with anyone else, since by the time the complaint was filed I had stopped working on any employment opportunity matters. I could not have discussed the Keely case with Sands. As a matter of fact, I never even heard of Keely until after I had filed my complaint with the Human Rights Division in

December, 1973. I never discussed the 1972 force reduction with Sands. The issue was raised regarding that reduction when Hull's federal complaint was filed. By that time I had practically no contact with the matter.

Sands is not stationed in New York, but in Charlotte, North Carolina. I did meet with him on occasion, mostly on the Massengill litigation in Chattannooga, Tennessee. I did tell him that I was interested in equal employment law and he expressed his appreciation that I was showing an interest in that area because he said there seemed to be no one else in the Law Department who thought the matter was important. However, I made it clear to him that I had very little time to devote to that subject since I had to work on my regularly assigned duties first. I did have a fairly extensive conversation with Sands in the early part of June, 1973, when I came back from Chattannoga with him. He certainly said nothing in that conversation which might be termed confidential or secret in relation to the Hull case, but I hesitate to set forth the full conversation because it might be regarded as privileged.

C. Ryan and Hobart Affidavits

The affidavits of Ryan and Hobart are almost entirely hearsay. They relate to alleged conversations between the affiant and other parties and, of course, I have no way of telling whether the affiant had those conversations or not. It is perhaps significant that Ms. Arnold and Ms. Barrett were not asked to submit affidavits as to the facts set forth in their supervisor's affidavits. I am certain that at no time did I solicit their participation in this case.

I think it important that I specifically deny those portions of Ryan's affidavit (repeated in Edelson's) suggesting that I had somehow attempted, in a surreptitious fashion, to get information from his files relating to the pension plan. I do not know that there is anything confidential about the pension plan, but just to set the record straight, it is true that I asked Ms. Arnold whether she had any printied explanatory material explaining the plan. She said no and I thanked her. She suggested that Ryan might help me, but I said it was not important - and the matter ended there.

I note that Ryan says that he reviewed "a draft" of his affidavit with Ms. Arnold. I should think that an

affidavit from Ms. Arnold would be the appropriate way of proving a conversation I had with her rather than an affidavit from someone else who has no personal knowledge of the matter.

D. Longman Affidavit

Longman's affidavit, like Edelson's, is almost entirely hearsay. He was not associated with Celanese between February, 1972 and January, 1974, and has no personal knowledge at all of my work in connection with the Hull case. His statements, based on hearsay, relating to my competence, are not worth responding to since the issue is not before the court at this time. His statement as to various conversations we had, since January, are substantially correct, except as to date. At the meeting described in paragraph 4. of his affidavit, which I believe took place on January 7th, I pointed out to him that I thought it improper for him to discuss the details of my case with me since I was represented by counsel.. He apologized for the impropriety but persisted in discussing the matter. The same thing happened on or about March 11th. He did not then tell me that there would be a conflict of interest if I proceeded to intervene in the Hull case - on the contrary, he told me that there was probably no

conflict problem, but that if it had been his case, he would have gotten another firm to represent him. I told Mr. Longman that I saw no particular reason to discuss the matter any further since we had had quite a few conversations on the matter and that I was represented by counsel if he had any comments to make.

E. Sims Affidavit

Sims' affidavit is quite incorrect in stating that I participated actively before the State Division of Human Rights in connection with the Hull case. As noted above, I did not attend a single meeting nor did I prepare or assist in preparing any proposed conciliation agreement. I simply corrected, mostly from a grammatical standpoint, a conciliation submitted by the State Division. Further, I never stated that I was Celanese Fibers Marketing Co.'s lawyer on matters relating to equal opportunity and discrimination. At one point Sims did give me a shopping bag of miscellaneous material on the Hull case. I used some of this material in the above-mentioned memorandum, dated July 1, 1973, which I ultimately submitted to Hill. There was nothing in these documents which was in any way confidential or secret as that term is used in connection with the relationship between attorney and client.

I never attended meetings at which defense strategy was discussed, and I attended only one meeting at which Robert Wiley was present. That was the meeting which occurred in August and it had nothing to do with the Hull case; it was primarily an interview between him and the consulting group I have referred to earlier which was consulting with management on the general problem of fair employment practices. No confidential information was involved in this meeting. I never attended a meeting at which a prospective witness was questioned, although I did meet a man who I understood might be a prospective witness. I do not recall his name.

I advised no one on the corporation's affirmative action program.

I did attend one meeting relating to Marilyn Karnes although I do not recall Sims attending that meeting. It was a very short meeting and I was simply told that the corporation hoped to encourage Ms. Karnes to leave. I had no occasion to discuss the merits of the Karnes case, nor did I review the entire situation, as alleged.

I did have a few informal private conversations, unrelated to the Hull case, with Sims but never had access to

any confidential material. I will be glad to detail the conversation if the court should deem it appropriate. I hesitate to do so not lest the defendants claim the conversations were privileged, though they were certainly not based on any secrets or confidences.

IV. Conclusion

As I have demonstrated, I feel certain that I am not now, nor have I ever been, in possession of any confidential information relating to this case. My responsibilities as an attorney would be my paramount consideration in restraining me from revealing such information, if indeed I did have any. I am hopeful that this litigation will proceed and that when this motion of defendants' is resolved, counsel will be able to turn their efforts to the prosecution and defense of this case on its merits with fairness and vigor, according each other the mutual respect to which both are entitled.

Donata Delulio

Donata Delulio

## Affidavit of Donata A. Delulio

Sworn to before me this

9th day of April, 1974.

Dorian Bowman

Notary Public

DORIAN BOWMAN
NOTARY PUBLIC-STATE OF NEW YORK
No. 60-[illegible]2375
Qualified in Westchester County
Commission Expires March 30, 1975

# AFFIDAVIT OF JOAN HULL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

JOAN HULL on behalf of herself and others similarly situated,

Plaintiffs,

-against-

CELANESE CORPORATION; CELANESE FIBERS MARKETING CO.; JOHN W. BROOKS, VERNON E. JORDAN, GRAYSON M-P MURPHY and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION; and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO.,

Defendants.

73 Civ. 3725 (RO)

AFFIDAVIT

----------x

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK )

JOAN HULL, being duly sworn, deposes and says:

I am the named plaintiff in the above entitled action and I make this Affidavit in opposition to defendants' motions to disqualify Donata Delulio, an applicant for intervention in this action, to disqualify my retained counsel, and for other relief.

I first met Ms. Delulio in September 1972 through a mutual friend of ours. We lunched together in October 1972

in a purely social context. In January 1973, I attended a luncheon with Ms. Delulio and a group of management women from the fibers company after we had learned that she was interested in doing legal work for our operating division. At none of these meetings was there a discussion of my case or any work Ms. Delulio was doing in connection with it. The following year, early in November 1973, Ms. Delulio contacted me and requested the name, address and telephone number of my attorneys. At that time she made no mention of any work which she had done regarding my case. Indeed she did not mention my case at all.

After she retained the Rabinowitz firm and made the decision to intervene in this action, I had closer contact with her. We have discussed the case between ourselves, amongst the other applicants for intervention and with counsel. Ms. Delulio and I have also met socially. Ms. Delulio has never in the course of these meetings disclosed anything to me of a confidential nature relating to my case which she would have learned in the course of her employment by Celanese. Indeed she specifically mentioned to me that because of her ethical obligations to Celanese, she would have to exercise discretion in discussing the case and her remarks have been

limited to a description of her own personal experiences which she considers to have been manifestations of Celanese's discriminatory policies. She has never volunteered nor have I ever asked her for any information which could arguably be considered confidential.

I am deeply concerned about the defendants' pending motion to disqualify the Rabinowitz firm as my legal representative. I selected them with knowledge of their long and vigorous advocacy in civil rights cases and I feel that they are particularly well suited to represent my interests in this action. In addition, they undertook my representation without fee. I, of course, agreed to pay the costs of litigation but I have not paid them a retainer or made a contingent fee agreement with them. I understand that they will look to the court for an award of counsel fees.

The relationship which I have developed with them, particularly with Ms. Walster and Mr. Rabinowitz, has convinced me that they are extremely effective and diligent advocates on my behalf. I had always considered that the right to be represented by counsel of one's choice was a constitutional right entitled the highest protection of courts of law. I find it hard to believe that I could be

deprived of this right on the basis of the unsupported assumption that Ms. Delulio has made disclosures of confidential information, especially in the face of the affidavits submitted by Ms. Delulio and counsel to the contrary. Moreover, disqualification of counsel might defeat my action entirely if I were unable to find qualified representation under a similar financial arrangement.

Joan Hull

JOAN HULL

Sworn to before me this
8th day of April 1974

Dorian Bowman

DORIAN BOWMAN
NOTARY PUBLIC-STATE OF NEW YORK
No. 60-3972375
Qualified in Westchester County
Commission Expires March 30, 1975

## AFFIDAVIT OF VICTOR RABINOWITZ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| JOAN JULL on behalf of herself and others similarly situated, Plaintiffs, -against- CELANESE CORPORATION; CELANESE FIBERS MARKETING CO.; JOHN W. BROOKS, VERNON E. JORDAN, GRAYSON M-P MURPHY and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION; and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO., Defendants. | 73 Civ. 3725 (RO) AFFIDAVIT |

STATE OF NEW YORK )
: ss.:
COUNTY OF NEW YORK )

VICTOR RABINOWITZ, being duly sworn, deposes and says:

I am a partner in the firm of Rabinowitz, Boudin & Standard, attorneys for plaintiffs in this action, and make this affidavit in connection with a pending motion by the defendants denying the application of Donata A. Delulio for intervention in this action and for other relief.

I have been generally familiar with this proceeding since it started and have worked closely with Ms. K. Randlett

Walster who is the associate primarily in charge of the case. I reviewed the complaint when it was originally drawn and have supervised research on various aspects of the case since that time. I have met with Ms. Hull on two or three occasions during the period prior to March of this year. In November of 1973, Ms. Walster informed me that Ms. Delulio had sought our representation on a claim of sex discrimination. We agreed that it would be proper to undertake her representation so long as Ms. Delulio understood she was not to discuss her prior work on the Hull case. At the end of 1973, a question was raised as to Ms. Delulio's intervention in the Hull action. The matter was discussed in general terms at an office meeting and a conclusion was reached that such intervention would not be a violation of Ms. Delulio's duty to her client so long as it was made clear to her that she was not to disclose to us or to Ms. Hull or to anyone else any confidential information she had received during the period of time in which she had worked on the Hull case. This conclusion was reached because it seemed to me and to my associates that any other decision would in effect make attorneys ineligible for relief under Title VII of the Civil Rights Act of 1964 because of discrimination on the basis of sex, race, national origin or similar characteristics.

By definition, every such proceeding is a proceeding against an employer, and if an employee-lawyer were disqualified from seeking protection of the Act, the result would be a discriminatory classification in violation of the Fifth Amendment.

My first recollection of having met and talked with Ms. Delulio was on March 11, 1974 when I met with all of the plaintiffs because Ms. Walster was out of town. Neither at that meeting nor at any other time prior to the making of the present motion have I discussed with Ms. Delulio the nature of her employment with Celanese nor has she transmitted to me or, so far as I know, to anyone else in this firm any information which might be deemed confidential.

Subsequently to the making of this motion, I have, of course, been required to inquire in some detail as to the work Ms. Delulio did with respect to the Hull case. However, even now she has not transm tted to me

any information relating to the substance of the work she did, or any information, confidential or otherwise, she acquired as a result thereof.

Victor Rabinowitz

Victor Rabinowitz

Sworn to before me this 8th

day of April, 1974.

Dorian Bowman

DORIAN BOWMAN
NOTARY PUBLIC-STATE OF NEW YORK
No. 60-0372575
Qualified in Westchester County
Commission Expires March 30, 1975

AFFIDAVIT OF K. RANDLETT WALSTER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| JOAN HULL, on behalf of herself and others similarly situated, | |
| Plaintiffs, | |
| - against - | AFFIDAVIT |
| CELANESE CORPORATION; CELANESE FIBERS MARKETING CO.; JOHN W. BROOKS, VERNON E. JORDAN; GRAYSON M.P. MURPHY, and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION, and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO., | 73 CIV. 3725 |
| Defendants. | |

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK )

K. RANDLETT WALSTER, being duly sworn, deposes and says:

I am an attorney associated with the firm of Rabinowitz, Boudin & Standard, and I make this affidavit in opposition to defendant's motions to disqualify Delulio, disqualify counsel and for other relief.

I have been primarily responsible for this action with supervision and assistance from members of the firm. My

records show that I first met with Delulio November 9, 1973. (At that time Jacqueline Keely, Marilyn Karnes and Mary Swet had already retained us as counsel for the purpose of intervention in the Hull case). Ms. Delulio described conduct on the part of her employers which she believed constituted discrimination against her on the basis of sex. At that time she also stated that she had been employed for a short time and in a limited capacity on the Hull case. She did not disclose the substance of her work. After discussion of the matter with Victor Rabinowitz, the firm decided to represent Delulio with the clear understanding that Delulio could not reveal to us anything of a confidential nature regarding her previous work on the Hull matter. November 15, 1973 we filed a complaint with the EEOC on her behalf.

The decision to seek leave for Delulio to intervene in this case was made toward the end of 1973. In making that decision, ethical considerations relating to Delulio's previous participation in the Hull case were discussed at an office meeting. We agreed that Delulio could never reveal any confidences to us in connection with her work on the Hull case and that with such an understanding, she would be entitled to intervene.

Delulio expressed concern with whether a possible ethical question would arise regarding her direct participation in the Hull case. She suggested sending an inquiry to the New York City Bar Association asking them for guidelines regarding her participation. While we considered such a letter unnecessary as we believed no ethical problem existed, I reviewed and approved Delulio's inquiry. A motion was filed for Delulio's intervention March 13, 1974. I was extraordinarily surprised when Delulio showed me the Association's response to her inquiry, the evening of March 18, 1974, advising her that she should not intervene and should not sue at all. I brought the matter to Victor Rabinowitz's attention and we agreed that we should advise the court of the Bar Association's informal opinion and request reconsideration from the Ethics Committee.

I have reviewed my files in this case and searched my recollection regarding all my meetings and conversations with Delulio. At no time has she disclosed any information regarding the substance of the work on the Hull matter. Our

discussions have related to her own claim of sex discrimination in employment.

K. Randlett Walster

K. RANDLETT WALSTER

Sworn to before me this

4th day of April, 1973.

Marlene Connor

Notary Public

MARLENE CONNOR, Notary Public
State of New York, No. 03-5789465
Qualified in Bronx County
Commission Expires March 30, 19 76

AFFIDAVIT OF MICHAEL KRINSKY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - - - - - X

JOAN HULL, on behalf of herself and others similarly situated,

Plaintiffs,

-against-

CELANESE CORPORATION; CELANESE FIBERS MARKETING CO.; JOHN W. BROOKS; VERNON E. JORDAN; GRAYSON M.P. MURPHY, and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION, and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO.,

Defendants.

73 Civ. 3725

AFFIDAVIT

- - - - - - - - - - - - - - - - - - - - - - - - - - X

STATE OF NEW YORK )
COUNTY OF NEW YORK ) ss.:

MICHAEL KRINSKY, being duly sworn, deposes and says:

1. I am an attorney-at-law associated with the firm of Rabinowitz, Boudin & Standard, attorneys for plaintiffs herein. I make this affidavit in opposition to defendants' motion now pending before the Court.

2. In connection with the above captioned matter I have done legal research on the question of whether the

maternity benefits extended by the defendant Celanese Corporation are in violation of Title VII of the Civil Rights Act. I have done no other work on the matter. I have had no conversations with any of the parties about the case nor have I been present during any such discussions. My discussion with attorneys in this office regarding the case have been limited to discussions regarding the maternity benefits issue.

3. In addition, the case has been discussed in general terms at office meetings but at no time have such discussions involved disclosure of information learned by Ms. Delulio in connection with her employment at Celanese or involved factual matters going to the merits of the action.

Michael Krinsky
MICHAEL KRINSKY

Sworn to before me
this 3rd day of April, 1974.

Marlene Connor

MARLENE CONNOR, Notary Public
State of New York, No. 03-5789465
Qualified in Bronx County
Commission Expires March 30, 1976

# AFFIDAVIT OF HERBERT JORDAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| JOAN HULL, on behalf of herself and others similarly situated, Plaintiffs, - against - CELANESE CORPORATION; CELANESE FIBERS MARKETING CO.; JOHN W. BROOKS, VERNON E. JORDAN, GRAYSON M-P. MURPHY and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO., Defendants. | AFFIDAVIT<br>73 CIV. 3725 |

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK )

HERBERT JORDAN, being duly sworn, deposes and says:

I am an attorney associated with the firm of Rabinowitz, Boudin & Standard.

During March of 1974, in connection with the case of Hull v. Celanese, I helped draft a set of interrogatories dealing with data storage and retrieval at Celanese. I have done no other work on the case.

**Affidavit of Herbert Jordan**

I have never communicated with or received communications from Donata Delulio, either orally or in writing. To my knowledge, I have never seen her. I have no direct or indirect knowledge of her work for her employer, except that I have heard at office meetings from my associates, that she is an attorney employed by Celanese who is seeking to intervene in the Hull case.

Herbert Jordan

HERBERT JORDAN

Sworn to before me this
4th day of April, 1974.

Marlene Connor

MARLENE CONNOR, Notary Public
State of New York, No. 03-5789465
Qualified in Bronx County
Commission Expires March 30, 1976

AFFIDAVIT OF LEONARD B. BOUDIN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - - - - X

JOAN HULL, on behalf of herself and others similarly situated,

Plaintiffs,

-against-

CELANESE CORPORATION: CELANESE FIBERS MARKETING CO.: JOHN W. BROOKS, VERNON E. JORDAN, GRAYSON M-P MURPHY and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO.,

Defendants.

Index No.
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- - - - - - - - - - - - - - - - - - - - - - - - - X

STATE OF NEW YORK )
COUNTY OF NEW YORK ) ss.:

LEONARD B. BOUDIN, being duly sworn, deposes and says:

I am a member of the firm of Rabinowitz, Boudin & Standard and I make this affidavit in opposition to the defendants' pending motions.

I have never discussed the merits of the case with any of the parties, including Miss Donata A. Delulio

Affidavit of Leonard B. Boudin

who has moved for intervention. I did have brief discussions with Miss Delulio in connection with the legal problems raised by the defendants' objections to her participation in this case as a plaintiff. I was aware, as a result of those discussions, that she was employed as a lawyer for Celanese. I did not inquire into and I was not told of any facts learned by her in the course of her employment, either with respect to this case or otherwise.

Leonard B. Boudin

LEONARD B. BOUDIN

Sworn to before me
this ~~4th~~ 4th day of April, 1974

Marlene Connor

MARLENE CONNOR, Notary Public
State of New York, No. 03-5789465
Qualified in Bronx County
Commission Expires March 30, 1976

## AFFIDAVIT OF DORIAN BOWMAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | | |
|---|---|---|
| JOAN HULL, on behalf of herself and others similarly situated, | : | |
| Plaintiffs, | : | |
| -against- | : | 73 Civ. 3725 |
| CELANESE CORPORATION; CELANESE FIBERS MARKETING CO.; JOHN W. BROOKS; VERNON E. JORDAN; GRAYSON M.P. MURPHY, and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION, and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO., | : | AFFIDAVIT |
| Defendants. | : | |

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK )

DORIAN BOWMAN, being duly sworn, deposes and says:

I am an attorney associated with the firm of Rabinowitz, Boudin & Standard and submit this affidavit in opposition to the defendants' motion to deny an application by Denata Delulio to intervene in this action and to disqualify the firm of Rabinowitz, Boudin and Standard from acting as plaintiffs' counsel in this case.

This case first came to my attention in late 1973 at a weekly office meeting. At that time Ms. Randlett

## Affidavit of Dorian Bowman

Walster mentioned that the firm was going to represent Joan Hull in a suit against Celanese Corporation. She explained that the suit charged Celanese with discrimination on the basis of sex. During the first part of 1974, at another office meeting, Ms. Walster discussed the intervention of Denata Delulio in the Hull suit. Ms. Walster explained that Denata Delulio was an attorney at Celanese Corporation and had worked for Celanese Corporation on Joan Hull's case. It was decided that such intervention would be appropriate.

I have never met Denata Delulio and I have not undertaken any activity with respect to this case. I have not taken part in any discussion in this office nor received any information with respect to the type or nature of work undertaken by Denata Delulio on Joan Hull's case while she was working as an attorney for Celanese Corporation.

Dorian Bowman

DORIAN BOWMAN

Sworn to before me this
3rd day of April, 1974

Marlene Connor

MARLENE CONNOR, Notary Public
State of New York, No. 03-5789465
Qualified in Bronx County
Commission Expires March 30, 1976

AFFIDAVIT OF ERIC M. LIEBERMAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

JOAN HULL, on behalf of herself and others similarly situated,

Plaintiffs,

-against-

CELANESE CORPORATION; CELANESE FIBERS MARKETING CO.; JOHN W. BROOKS; VERNON E. JORDAN; GRAYSON M.P. MURPHY, and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION, and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO.,

Defendants.

73 Civ. 3725

AFFIDAVIT

----------x

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK )

ERIC M. LIEBERMAN, being duly sworn, deposes and says:

I am an attorney associated with the firm of Rabinowitz, Boudin & Standard.

I have done no work whatsoever on the above-entitled case.

I have never communicated with or received communications from Donata Delulio, either orally or in writing. I have no direct or indirect knowledge of her work for her

employer, except that I have heard at office meetings from my associates, that she is an attorney employed by Celanese, who is seeking to intervene in the Hull case.

Eric M Lieberman
ERIC M. LIEBERMAN

Sworn to before me
this 3rd day of April, 1974.

Dorian Bowman

DORIAN BOWMAN
NOTARY PUBLIC-STATE OF NEW YORK
No. 60-0372375
Qualified in Westchester County
Commission Expires March 30, 1975

# AFFIDAVIT OF MICHAEL B. STANDARD

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - - - X

JOAN HULL, on behalf of herself and others similarly situated,

Plaintiffs,

-against-

CELANESE CORPORATION; CELANESE FIBERS MARKETING CO.; JOHN W. BROOKS; VERNON E. JORDAN; GRAYSON M.P. MURPHY, and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION, and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO.,

Defendants.

73 Civ. 3725

AFFIDAVIT

- - - - - - - - - - - - - - - - - - - - - - - - X

STATE OF NEW YORK )
COUNTY OF NEW YORK ) ss.:

MICHAEL B. STANDARD, being duly sworn, deposes and says:

I am a partner in the firm of Rabinowitz, Boudin & Standard, attorneys for the plaintiffs herein. I make this affidavit in opposition to the defendants' pending motions.

To my knowledge the only conversations in which I have participated regarding any aspect of the above captioned

## Affidavit of Michael B. Standard

action or Ms. Donata Delulio have occurred at the regular Wednesday meetings of the lawyers in this office.

To the best of my knowledge and belief I have on no occasion heard any mention made of the specifics of Ms. Delulio's work on the Hull case; indeed, I have never had any particularized or detailed knowledge of the substance of the litigation generally.

Michael B. Standard

MICHAEL B. STANDARD

Sworn to before me
this 3rd day of April, 1974

Doreen Bowman

DORIAN BOWMAN
NOTARY PUBLIC-STATE OF NEW YORK
No. 6[illegible]2375
Qualified in Westchester County
Commission Expires March 30, 19[illegible]



ONLY COPY AVAILABLE

## REPLY AFFIDAVIT OF GILBERT S. EDELSON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - - - x

JOAN HULL, on behalf of herself and others similarly situated,

Plaintiffs,

- against -

CELANESE CORPORATION, CELANESE FIBERS MARKETING Co., JOHN W. BROOKS, VERNON E. JORDAN, GRAYSON M-P MURPHY and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION, and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO.,

Defendants.

Index No.
73 Civ. 3725
(R.O.)

REPLY AFFIDAVIT

- - - - - - - - - - - - - - - - - - - - - - - - x

STATE OF NEW YORK )
COUNTY OF NEW YORK ) ss.:

GILBERT S. EDELSON, being duly sworn, deposes and says:

1. I submit this affidavit in response to the affidavits submitted in opposition to plaintiff's motion to deny the application of Donata A. Delulio ("Delulio") for intervention in this action, to disqualify counsel, and for further relief. I shall respond particularly to the affidavit of Delulio, sworn to April 9, 1974.

2. In her letter to the Committee on Professional and Judicial Ethics of January 29, 1974, Delulio states:

> "During the six months that I worked on that case I studied the general regulations of the Equal Employment Opportunities Commission, its procedures and the law on sex discrimination generally. I obtained specific information from the personnel department of the division concerning salaries and hiring practices. I attended one interview of the employee's superior, and

> attended one interview of another division employee. I participated in a conference with outside consultants hired by the corporation to prepare statistical information regarding employment within the division. I obtained inter-office memoranda and prepared a memorandum myself regarding the case."

3. Delulio now seeks to back-track from this modest description of her services. The memorandum of law submitted on her behalf describes her work differently (p. 29):

> "Delulio did not have any professional responsibility for the Hull case . . . She was never involved in formulating defense strategies, locating or interviewing witnesses, discussing the merits of the action or doing any other work which would have exposed her to confidential communications."

4. As I shall show, Delulio did not make full disclosure to the Committee of the work she did for Celanese, and she has not made full disclosure to this Court. Nonetheless, we believe that her own description of her services is sufficient to show beyond any doubt that she performed legal services for Celanese in the Hull case. And the courts uniformly hold that once a lawyer is shown to have performed services on a matter, there is an irrebuttable presumption that confidential information* was acquired by that lawyer.

*The phrase "confidential information" is used here to denote either or both "confidences" or "secrets" as defined in DR 4-101.

5. Assuming arguendo, and contrary to law and fact, that facts additional to those set forth in Delulio's letter to the Committee and affidavit are required to show that Delulio has acquired confidences, we believe that a sufficient showing was made in the moving affidavits. In her answering affidavit, Delulio sets forth her version of her services for Celanese. Defendants' reply affidavits show on the basis of documents or other facts which cannot reasonably be denied that Delulio's affidavit omits certain essential facts and confuses others.

6. The omission of important facts may be demonstrated from the following statement on page 20 of Delulio's affidavit:

> "Sims' affidavit is quite incorrect in stating that I participated actively before the State Division of Human Rights in connection with the Hull case. As noted above, I did not attend a single meeting nor did I prepare or assist in preparing any proposed conciliation agreement. I simply corrected, mostly from a grammatical standpoint, a conciliation submitted by the State Division."

Common sense tells us that the conciliation did not appear to Delulio from the air. Someone must have shown it to her, explained the matter and Celanese's position. Those critical facts are not mentioned by Delulio. They are supplied in the reply affidavits.

7. In seeking to minimize her role as a lawyer for the defense, Delulio's answering affidavit also denies with

varying degrees of vehemence various statements in the moving affidavits about her services. Thus, the statements in my affidavit about her activities are described as "false" and " . . . to use a short and ugly word, a baldfaced (sic) lie.*" Insofar as it is aimed at me, Delulio's venom is misdirected. My statements, with respect to events in the period prior to August 1973, are largely summaries of the statements made in other affidavits by her colleagues at Celanese, clearly labelled as such. As I noted in paragraph 8 of my original affidavit, for the convenience of the court, I was summarizing in one place - my affidavit - and in chronological order, the facts contained in all the moving affidavits. My statements about Delulio's activities after August 3, 1973, when I became litigation counsel on this matter, are made of my own knowledge. As I shall show they are, for the most part, made from and supported by contemporaneous written records of the events described.

8. I do have some actual knowledge of at least one event which occurred prior to August 3, 1973 - the memorandum prepared by Delulio. A copy of that memorandum is in my possession. It is double spaced and 20 pages in length.

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*While I will not respond in kind to this admittedly "ugly" language, I am constrained to note that the cliche is incorrect. The correct expressions are "bald lies" and "bold faced lies."

Attached to it are 33 documents relating to the Hull matter totalling 75 pages, which were apparently culled from the files and copied by Delulio. Those documents are referred to or discussed in the memorandum. Delulio's affidavit purports to list and describe those documents. Her list and description are grossly incomplete. Omitted from mention is at least one memorandum to counsel, setting out the facts and requesting legal advice, and at least three memoranda reflecting, in part, discussions with counsel of the facts and possible defense and defense strategies in the Hull matter. All of the foregoing memoranda contain confidential information. Delulio's statement on page 10 that she does not believe that there is anything confidential in the memorandum demonstrates her lack of understanding of the term.

9. Without in any way waiving Celanese's privilege with respect to the substantive contents of the Delulio memorandum, I can state that it purports to be a comprehensive review of (i) the facts relating to Hull's 1969 complaint to the New York State Division of Human Rights and the conciliation agreement which followed (ii) the facts leading up to the bringing of Hull's 1972 complaints to the Division and the EEOC (iii) a "legal analysis" (the expression is Delulio's) of the status of the complaints and (iv) Delulio's "recommendations relative to pending litigation."

10. Delulio states in the memorandum that in preparing it, she

> " . . . thoroughly reviewed the Joan Hull files in both the Law Department and Personnel Department of Celanese Fibers Marketing Company . . ."

Delulio's affidavit does not inform the Court of her "thorough review" of the relevant files - a matter which bears directly on her claim that she never received any confidential information.

11. It is my practice for billing and other purposes, to maintain a diary record of my time and activities in connection with any litigation. As those records contain confidential information, I am unable to annex them. I will supply the relevant portions to the Court, in camera, however, if such an examination by the Court is deemed material. I represent to this Court that my diary entries for the Hull matter show the following:

August 3, 1973-- A meeting at Celanese for 3-1/2 hours. I know that I met with Mr. Hill to discuss the Hull case, and I believe, although my records do not so state, that I met for the first time with Delulio on that date.

August 14,1973-- A 1/2 hour telephone conversation with Delulio.

August 16,1973-- A meeting and luncheon conference of several hours at Celanese. Although not contained in my diary, my recollection is that Delulio attended the meeting and that we lunched at the Princeton Club. There is another telephone conversation with Delulio on that date.

August 17,1973-- A telephone conversation with Delulio.

August 20,1973-- One and possibly two telephone conversations with Delulio.

August 21,1973-- A meeting attended by Delulio and others of an approximate two hour duration. My records show Ronald Wright, among others, present at the meeting.

August 23,1973-- One and possibly two meetings with Delulio, of approximately 2-1/2 hours. Robert Wylie was interviewed at one of the meetings.

August 24,1973-- A meeting with Delulio for 1/2 hour.

August 30,1973-- Telephone conversations with Delulio and Kramer. This was my first important contact with Kramer on the matter, although I may have had one or two very brief and informal communications with him prior to this date.

August 31,1973-- A telephone conversation with Delulio in which we discussed the complaint filed by Hull in this Court.

September 4,1973-- Several meetings at Celanese totalling 4-1/2 hours, at least one of which was with Delulio.

September 10,1973-- A telephone conversation with Delulio.

September 14,1973-- A lengthy meeting, approximately 2 hours, at Celanese at which we interviewed Homer S. Klock who was Personnel Director of CFMC during a part of the period mentioned in the Hull complaint. Although my diary does not name all the participants in this meeting, a memorandum of the meeting shows Delulio in attendance.

September 20, 1973-- A very long call with Delulio in the evening of approximately one hour's duration."

September 24, 1973-- A telephone conversation with Delulio. This is my last recorded conversation with her on the Hull matter.

11. The documentary record shows that during the greater part of August and September 1973, I had close and almost day-to-day contact with Delulio on the Hull case. During that period I was engaged primarily in gathering the facts. To do this, I necessarily had to assemble and review documents and hold discussions with Celanese executives with knowledge of the facts. During this period, Delulio attended meetings with me at which were present one or more of Ronald A. Wright, Lloyd E. Sims, Robert S. Wylie, Benjamin Sands and Homer Klock, all Celanese executives with knowledge of the facts. The purpose of those meetings was to elicit information, and to develop defense strategy. The discussions were frank and open. Of course, confidences were disclosed at those meetings. That was their purpose.

12. The notion that Delulio acquired no confidential information from her review of the documents, and participation in the meetings and conversations which I have described, is sheer nonsense. Had Delulio informed me on October 1, 1973 that she wished to join in the Hull suit as a plaintiff and wished me to represent her, I would have told her that I was disqualified because of my participation in the action on behalf of Celanese and the confidential information which I had acquired, as was she.

13. It is apparent from the foregoing that written contemporaneous records disclose numerous errors and omissions in Delulio's affidavit. For example:

(a) Delulio states on page 10 of her affidavit that she first met me "after Hull's federal action was filed." Actually, Delulio and I were working on the matter for some weeks before this action was filed.

(b) On page 11 of her affidavit, Delulio states that her "last activity regarding the Hull case took place September 4." On page 17 of her affidavit, she states that "I never discussed the Hull complaint with Sands or with anyone else, since by the time the complaint was filed, I had stopped working on any employment opportunity matters." Delulio's letter to the Committee likewise states that she performed no services after Hull's complaint in this case was filed. All the foregoing statements are incorrect. Hull's complaint was filed on or about August 24, 1973 and was served a few days later. My diary shows that I discussed the complaint with Delulio on August 31. My diary also shows that her activities on the matter continued until at least September 24, 1973.

(c) Delulio states on page 15 of her affidavit that I was advised by Hill that I would be working with Mr. Kramer on the Hull case. As Delulio did not attend that meeting, she does not know what I was told by Mr. Hill. The

fact is, as Mr. Hill's affidavit states, that he told me I would be working primarily with Delulio. My diary shows that until about the time that the complaint was filed in this Court, I had virtually no contact with Kramer; my contacts were almost exclusively with Delulio.

(d) Delulio states on page 16 of her affidavit that she "never consulted with corporate officials with respect to a defense" of the Hull case. This is not so. Delulio was present at meetings with one or more of Wright, Sims, Wylie, Sands and Klock, at which defenses to Hull's charges were discussed.

(e) Delulio states on page 21 of her affidavit that she "never attended a meeting at which a prospective witness was questioned." As shown above, she was present during discussions with and questioning of all the above-mentioned executives, all prospective witnesses.

(f) Delulio states on page 15 of her affidavit that she ". . . had no access to salary scales, evaluations, promotion data, testing results or any other similar material which would be relevant in defending the Company against discrimination charges made against the Corporation by Hull or anyone else." This statement contrasts with her statement to the Committee that she ". . . obtained specific information from the personnel department of the division concerning salaries and hiring practices" and her statement in her July 3

memorandum that she made a "thorough review" of the files of both the CFMC Personnel Department and the Celanese Law Department.

14. Delulio, on pages 18 and 19 of her affidavit, denies the statements attributed to Ann Arnold in the affidavit of John Ryan, submitted in support of the motion. Delulio's affidavit suggests that Ms. Arnold should submit an affidavit. Several days after the defendants' motion papers were served, I received a telephone call from Ms. Arnold. She told me that Delulio had spoken with her about the statements attributed to her in the Ryan affidavit. She said that she had given the matter further thought and wished to submit an affidavit so that the record would be absolutely clear. That affidavit is annexed hereto. It shows that:

(a) Delulio suggested to Arnold that she might have grounds for a suit against Celanese.

(b) Arnold assumed from the content of a conversation with Delulio that Delulio was asking her to join the action as a plaintiff. Delulio now says that Arnold's assumption was incorrect.

(c) Delulio said that Arnold would not be any good in this suit, because she (Delulio) did not need anyone from the corporate staff, but it might make a difference if Arnold were in the Plastics Division.

(d) Arnold, who has no stake in the matter,

affirms the statement of the Ryan affidavit with respect to Delulio's request for information in Ryan's files.

15. Delulio takes violent exception to the statement in my original affidavit (¶18) that at the annual luncheon of the Celanese Law Department on December 17, 1973, we had a conversation in which I described a meeting which I had had with a prospective witness and also discussed Celanese's position on various aspects of the law and facts of the case. Delulio states on page 16 of her affidavit that

> ". . . although I did sit next to Mr. Edelson at the 1973 Christmas luncheon, we did not discuss the Hull case. Many other attorneys were present and the conversation was social and not related to business."

This statement is contradicted by Delulio in her letter to Mr. Hill dated December 18, 1973, the day after the luncheon. In her letter Delulio states that she and I did discuss the Hull case and indicates that our discussion prompted her letter. The question is not whether we discussed the Hull case, but what was said. In this connection, it should be noted that in my conversation with K. Randlett Walster of the Rabinowitz firm sometime shortly after the luncheon, I mentioned my conversation with Delulio as one of the confidential disclosures which Delulio had received and which gave me concern about the Rabinowitz firm's participation in the case. Ms. Walster told me that Delulio had not repeated to her the substance of our conversation at the Christmas luncheon, and

stated that this was an example of Delulio's restraint in making disclosures.

16. While I believe that Delulio has exercised restraint in disclosing to this Court the entire nature of her activities on the Hull case, that restraint has been otherwise notably lacking. For example, Delulio has stated in the affidavit supporting her motion for leave to intervene, among other places, that Celanese has been guilty of sex discrimination in the Hull case. In light of her "thorough review" of all of the files and her activity in the defense of the Hull case, such a public statement is plainly improper. Delulio claims that her assertion is based "not on any confidential or secret information I received during my employment as an attorney but rather based upon my own experience and observation as an employee of the company." Delulio's claim that she can separate the facts acquired from her "experience and observation as an employee" from the facts acquired as a result of her thorough review of the files and participation in many meetings with counsel and executives, is simply unbelievable.

Gilbert S. Edelson
GILBERT S. EDELSON

Sworn to before me this
16th day of April, 1974.

James K. Nevling Jr.

JAMES K. NEVLING JR.
NOTARY PUBLIC, State of New York
No. 31-5126820
Qualified in New York County
Commission Expires March 30, 1976

**AFFIDAVIT OF ANN B.ARNOLD**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - - x

JOAN HULL, on behalf of herself and others similarly situated,

Plaintiffs,

- against -

CELANESE CORPORATION, CELANESE FIBERS MARKETING CO., JOHN W. BROOKS, VERNON E. JORDAN, GRAYSON M-P MURPHY and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO.,

Defendants.

Index No.
73 Civ. 3725

AFFIDAVIT

- - - - - - - - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK )

ANN B. ARNOLD, being duly sworn, deposes and says:

1. On April 1, 1974 Donata A. Delulio visited me in my office. She asked me to read the affidavit of John J. Ryan, sworn to on March 21, 1974, in which I am mentioned. I had read it before Mr. Ryan signed it, at which time he made certain changes at my suggestion. Nevertheless, I read it again.

2. Miss Delulio asked me whether the affidavit was correct. I said that the affidavit was correct except for the statement that I "had been approached" by her and asked to consider joining the suit. This statement is ambiguous and does not accurately describe what I remembered. I am submitting this affidavit to clarify the record.

3. During a conversation with Miss Delulio in January 1974, I was discussing my own position and future at Celanese. In connection with the matters which I had raised, Miss Delulio suggested that I might have grounds for a suit against Celanese. I immediately said that I was not interested in bringing a suit. She said that she agreed because I was not the type to sue in that I wasn't enough of a fighter. I agreed. I said that the trouble was that I could always see the other point of view.

4. Previous to this conversation, Miss Delulio had told me that she, Joan Hull and others were involved in some sort of action against Celanese. With that knowledge, I assumed that when we discussed a law suit which I might bring, Miss Delulio was asking me to join the group with which she was involved. She did not explicitly ask me to do so, but I assumed this in the context of our conversation.

5. Miss Delulio told me in our conversation of April 1 that my assumption was incorrect. She said that because I was not making enough money, I would not be any good to her suit. She also said that she did not need anybody on the corporate staff but if I had been in the Plastics Division, it might have made a difference.

6. Miss Delulio said that because she was bringing a class action, I need not join in it, since I would benefit

by it anyway.

Ann B. Arnold

ANN B. ARNOLD

Sworn to before me this

3rd day of April, 1974

Malvina W. Back

MALVINA W. BACK
Notary Public, State of New York
No. 52-0124900
Qualified in Suffolk County
Certificate filed in New York County
Commission Expires March 30, 1975

# AFFIDAVIT OF JAMES SCOTT HILL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - x

JOAN HULL, on behalf of herself and others similarly situated,

Plaintiffs,

- against -

CELANESE CORPORATION, CELANESE FIBERS MARKETING CO., JOHN W. BROOKS, VERNON E. JORDAN, GRAYSON M-P. MURPH- AND DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO.,

Defendants.

- - - - - - - - - - - - - - - - - - - - - - x

Index No.
73 Civ. 3725

AFFIDAVIT

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK )

JAMES SCOTT HILL, being duly sworn, deposes and says:

1. I am Vice President and Special Counsel of Celanese Corporation ("Celanese"). Prior to January 30, 1974 and at all relevant times mentioned in this affidavit, I was Vice President, Secretary and General Counsel of Celanese, and, as such, head of the Celanese Law Department. I submit this affidavit in response to certain statements made in the affidavit of Donata A. Delulio, sworn to April 9, 1974.

2. I deny completely that Celanese discriminated in any way against Ms. Delulio on the basis of her sex. On the con-

trary, one of the reasons Ms. Delulio was hired was that I felt strongly that an effort should be made to bring more women into the Celanese Law Department. Moreover, although her judgment and competence were criticized at various times by both senior members of the Law Department and a number of Celanese executives, I took no action against her. I refrained from such action, which I might otherwise have taken, partially because Ms. Delulio was a woman. I continued to hope that her performance would improve and that she would become a fully qualified member of the Department.

3. I understand that it has been asserted that Ms. Delulio had no professional responsibility for the Hull matter and therefore that she was not an attorney for the corporation in the matter. I disagree.

4. My basic philosophy was to have the Law Department completely responsible for the legal affairs of the corporation. As such, the individual members of the Department did all the work required for the corporation not only to prevent legal problems but also to solve them once they arose.

5. One of several exceptions to that rule involved the conduct of litigation. When we became aware that litigation was pending or likely to be brought, outside litigation counsel were retained. They, as specialists, conducted the case. Litigation counsel did so, however, under the supervision and direction of one or more members of the Celanese Law Department, who continued to have overall responsibility for the case. It was our practice,

moreover, for members of the Law Department to work closely with litigation counsel, to attend meetings, review papers to discuss and approve the overall strategy for handling the case and to participate actively in all aspects of litigation, except actual courtroom work and related matters. It was my general practice to expect the individual members of the Department, and not necessarily litigation counsel, to keep me informed on such matters as necessary.

6. The members of the Law Department who were responsible for the Hull matter at various times during 1973 were Robert Ciovacco, Everett W. Kramer and Donata A. Delulio. Although Mr. Kramer, a senior member of the Department, had overall responsibility for personnel matters, he did not devote any substantial amount of time to the Hull case until the complaint was filed in this Court. For a period of time prior to the filing of the complaint, however, and for a short period thereafter, I looked to Ms. Delulio as the Celanese lawyer most closely connected with the matter.

7. In or about June 1973, I asked Ms. Delulio to prepare a memorandum concerning the legal and factual problems present in the Hull matter, and her recommendations (a) for the conduct of the case and (b) for the conduct of the corporation in the general field of sex discrimination. That memorandum was supplied to me in July. I regarded it as inadequate. While she submitted an elaborate recitation of facts, apparently culled

from the files and interviews, her legal and factual analysis lacked the depth which I expected.

8. While I was disappointed in her memorandum and in other work which she did for me, I continued to hope that her performance would improve.

9. When the Rosenman firm was retained as litigation counsel on the Hull matter in early August 1973, I met with Gilbert S. Edelson of the firm to brief him on the matter. I told him that he would be working primarily with Ms. Delulio, although Mr. Kramer, as a senior member of the Department, would also be acting on the matter.

10. In or about late September or early October 1973, I reached the conclusion that there was a serious question of whether Ms. Delulio could or should remain with Celanese. This was buttressed by comments from some of the senior executives of the corporation with respect to the adequacy of her work, and a continued strong concern by senior members of the Law Department who were working with her about the quality of her work. I then decided that Ms. Delulio should be relieved of her other assignments and assigned solely to work on matters relating to the Celanese Fibers Group. My reason for this action was threefold: First, I believed that Ms. Delulio required further training in basic legal skills, such as research, and that she would receive such training in her new assignment. Second, work for the Fibers Group seemed to be the area in which Ms. Delulio would be most

likely to succeed for the reason, among others, that it was an area in which she had expressed a desire to work. Third, the Hull suit had been instituted in this Court and I wanted Mr. Kramer to assume full-time responsibility for the matter.

11. In or about early December 1973, I met with Robert A. Longman, who was to succeed me as head of the Law Department, in order to go over a number of pending problems. At that time I conveyed to him my feelings about Ms. Delulio and pointed out the serious reservations I had about her. As I had decided to leave my position as head of the Law Department, however, I believed that any further action with respect to Ms. Delulio should be taken by my successor.

12. At the time of my conversation with Mr. Longman, I was not aware that Ms. Delulio had filed charges against Celanese with the Equal Employment Opportunity Commission. Although those charges were filed on November 15, 1973, Ms. Delulio, for reasons which were never made known to me, did not disclose that fact to me for more than a month. I learned of the charges

# AFFIDAVIT OF JAMES SCOTT HILL

for the first time as a result of her letter to me dated December 19, 1973.

JAMES SCOTT HILL

Sworn to before me this
15th day of April, 1974

J. David McCalmont

J. DAVID Mc CALMONT
Notary Public, State of New York
No. 60-7792265
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 1976

## AFFIDAVIT OF RONALD A. WRIGHT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - x

JOAN HULL, on behalf of herself and others similarly situated,

Plaintiffs,

- against -

CELANESE CORPORATION, CELANESE FIBERS MARKETING CO., JOHN W. BROOKS, VERNON E. JORDAN, GRAYSON M-P MURPHY and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO.,

Defendants.

Index No.
73 Civ. 3725

AFFIDAVIT

- - - - - - - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK )

RONALD A. WRIGHT, being duly sworn, deposes and says:

1. I am Director of Personnel of Celanese Fibers Marketing Company ("CFMC") a division of Celanese Corporation. I submit this affidavit in response to certain of the statements in the affidavit of Donata A. Delulio ("Delulio"), sworn to April 9, 1974.

2. Delulio's description of her activities both on the Joan Hull and the Marilyn Karnes matters is incomplete. With respect to the Hull matter, my recollection is that Delulio began working on the case, as a Celanese lawyer, in or about February 1973, before the departure of Robert Ciovacco, the lawyer who had worked with us until the end of February.

3. In or about March 1973, when the Hull matter was pending before the New York State Division of Human Rights, one of the legal problems with which we were presented was whether Celanese should enter into a conciliation agreement which had been suggested by the Regional Director of the Division, and what changes could or should be made in the proposed agreement. Delulio states on page 7 of her affidavit that her only activity with respect to this problem was that she was shown a proposed conciliation agreement, and that she "proposed a few grammatical and stylistic changes in it." Delulio also states on page 20 of her affidavit that she "did not attend a single meeting" about the matter. These statements are not correct.

4. The fact is that I and other Celanese executives participated in two or more meetings at which Delulio was present as a lawyer for Celanese, in the course of which there were discussions of the proposed conciliation agreement as well as overall defense strategy. Delulio took an active part in those meetings which went far beyond the mere proposal of "a few grammatical and stylistic changes."

5. I cannot agree with Delulio's statement on page 8 of her affidavit that I asked her in May whether she could assume any responsibility on the Hull case or that she told me that she could not because she was not assigned to the case. I assumed from Delulio's activities on the matter since February that she was one of the lawyers working on the case for Celanese. On several occasions, I pressed

Delulio for further or faster action on certain matters, but I never had any doubt that she was working on the Hull case and had some degree of responsibility for the matter. This was fortified by my observation of the active part which Delulio took in the discussions at the meetings I have described above.

6. Ms. Delulio also gave us legal advice with respect to a matter concerning Marilyn Karnes, who I understand is seeking leave to intervene as a co-plaintiff with Delulio. The facts are these. For some months prior to April 1973, there had been friction between Ms. Karnes and her supervisor. The Personnel Department was asked to review the situation. Because of the possibility that the matter could have "equal employment" ramifications, I believed that we should have the benefit of legal counsel. And, because I believed that Delulio was assigned to such matters, I contacted her and asked her to come to a meeting at which the Karnes situation would be reviewed.

7. That meeting was held on or about April 2, 1973. It was certainly not a short meeting, as Delulio states. It was attended by myself, Mr. Sims, Robert Wylie and Edward Riebel. As we were seeking legal advice from Delulio, I believed that she should be fully apprised of the facts. Accordingly, I showed her and reviewed with her a number of highly confidential documents, including Karnes' personnel file and a number of other memoranda pertaining to

the situation. We then had a full discussion of the facts and possible legal ramifications of the Karnes situation and the alternatives available to us in dealing with the matter.

8. I am surprised at Delulio's statement, on page 21 of her affidavit, that she had ". . . no occasion to discuss the merits of the Karnes case, nor did [she] review the entire situation, as alleged." This was the very point of the meeting, as is reflected in the introduction to Mr. Sims' memorandum of what occurred. The very matters we discussed at that meeting are among the issues now raised by Karnes.

9. I believe the statements made at our meeting with Delulio were confidential communications to our lawyer. Delulio's statement on page 21 of her affidavit that she ". . . was simply told that the corporation hoped to encourage Ms. Karnes to leave" is, therefore, a disclosure of a communication made to her in confidence. It is also an inaccurate statement of what was said to her as our lawyer.

Ronald A. Wright

RONALD A. WRIGHT

Sworn to before me this
15th day of April 1974

J. David McCalmont

J. DAVID Mc CALMONT
Notary Public, State of New York
No. 60-7792265
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 1976

## AFFIDAVIT OF ROBERT S. WYLIE, JR.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - - x

JOAN HULL, on behalf of herself and others similarly situated,

Plaintiffs,

- against -

CELANESE CORPORATION, CELANESE FIBERS MARKETING CO., JOHN W. BROOKS, VERNON E. JORDAN, GRAYSON M-P MURPHY and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO.,

Defendants.

Index No.
73 Civ. 3725

AFFIDAVIT

- - - - - - - - - - - - - - - - - - - - - - - x

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK )

ROBERT S. WYLIE, JR., being duly sworn, deposes and says:

1. I am Vice President, Merchandising Services of Celanese Fibers Marketing Co., a division of Celanese Corporation. I submit this affidavit in response to certain statements made in the affidavit of Donata A. Delulio ("Delulio") sworn to April 9, 1974.

2. I understand that Delulio has stated in her affidavit (p.20) that she "did not attend a single meeting" with respect to the Joan Hull proceedings before the New York State Division of Human Rights. This statement is not correct.

3. In March 1973, we had under active consideration a proposed conciliation agreement between Celanese and Hull,

which had been drafted by the Regional Director of the State Division. A meeting with the Director was scheduled for the afternoon of March 12, 1973. Immediately prior to that meeting and in preparation therefor, I met first at Celanese and then for lunch at the Biltmore Hotel with Richard Adelman, who was then Celanese's litigation counsel, Lloyd E. Sims,Jr. and Delulio. In the course of that meeting, we reviewed the entire Hull situation, discussed the proposed conciliation agreement and all of its ramifications and further discussed our overall strategy in the case. I recall that I talked with complete candor about the facts and merits of the case. Delulio was present throughout and participated in the discussions. Of course, what was said at that meeting was,and is to the best of my belief, highly confidential since we were discussing the merits of and possible procedure in an ongoing legal matter.

4. I again met with Delulio on or about April 2, 1973 at which time there was a discussion of a problem concerning the status of Marilyn Karnes in the light of a high degree of friction which had developed between her and her immediate supervisor and because of her general work attitude. Delulio attended as a Celanese lawyer. At that meeting, there was a complete review of the Karnes situation including complaints which had been made by and about Karnes, as well as Karnes' position and future in the company. There was a discussion of our rights and possible procedures to be followed. Again, because Delulio was our lawyer, I felt I could be completely candid and open, and I was.

I have no doubt that at that meeting Delulio was made aware of all the facts respecting the Karnes situation.

3. I also recall attending a meeting in late August 1973 which was held in the library of the Law Department. Among those present were our litigation counsel, Gilbert S. Edelson, and Delulio. I understand that Delulio has stated that the Hull matter was not discussed. This is simply not the case. There was a rather full discussion of the facts relating to the Hull case as well as other matters concerning equal employment opportunity for women at the company.

4. It is possible that I also met on one or more other occasions with Delulio at which time the Hull case, or facts relating thereto, was discussed. Since my memory is presently not clear on those additional meetings, I am limiting my affidavit to those occasions of which I have a clear and certain recollection.

Robert S. Wylie Sr.

ROBERT S. WYLIE, JR.

Sworn to before me this

15th day of April, 1974

J. David McCalmont

J. DAVID Mc CALMONT
Notary Public, State of New York
No. 60-7792265
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 1976

**AFFIDAVIT OF LLOYD E. SIMS, JR.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - x

JOAN HULL, on behalf of herself and others similarly situated,

Plaintiffs,

- against -

CELANESE CORPORATION, CELANESE FIBERS MARKETING CO., JOHN W. BROOKS, VERNON E. JORDAN, GRAYSON M-P MURPHY and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO.,

Defendants.

- - - - - - - - - - - - - - - - - - - - - -x

Index No.
73 Civ. 3725

AFFIDAVIT

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK )

LLOYD E. SIMS, JR., being duly sworn, deposes and says:

1. I have read the affidavit of Donata A. Delulio ("Delulio"), sworn to April 9, 1974, a part of which is devoted to responding to my previous affidavit submitted in support of defendants' motion.

2. I understand that Delulio has disputed statements made by myself and others about her activities in the Hull matter. I can only respond by affirming that the statements in my affidavit are, to the best of my knowledge, truthful.

3. Delulio's affidavit is incorrect in a number

of respects, largely because of the omission of certain facts.

4. Ms. Delulio states on p. 20 that she did not attend a single meeting in connection with the Hull complaint before the New York State Division of Human Rights. I do not believe that her recollection is correct. I attended at least one meeting with her, which is described in the affidavit of Robert A. Wylie, Jr., and I believe that there were others.

5. Ms. Delulio also incorrectly states in page 21 of her affidavit that she attended only one meeting at which Robert Wylie was present. In addition to the meeting in August 1973, which Delulio refers to, she was present at at least two other meetings with Wylie. One is the meeting which I have already described. The other is the meeting concerning Marilyn Karnes, which is described in the affidavits of Messrs. Wylie and Ronald Wright. As their affidavits show, Delulio's description of what occurred is incomplete. Her statement that I was not present is incorrect. I prepared a memorandum of the meeting, which is dated April 2, 1973. In order that there can be no question about the approximate date of the meeting, the persons participating and the subject of discussion, I annex a copy of the first paragraph of the memorandum. The remainder of the memorandum reflects the substance of our conversation with counsel and, I am informed by counsel, is privileged.

6. Delulio's affidavit refers on page 20 to a "shopping bag of miscellaneous material on the Hull case"

which I gave to her, but her affidavit does not fully describe what occurred.

7. In or about May or June of 1973, I was requested by Ronald Wright, to assemble for the Law Department, all the documents which I could find relating to the Joan Hull matter. (At that time Hull's complaint was pending before the New York State Division of Human Rights). I thereupon assembled all of the documents which I could find relating to (i) Hull's case before the Human Rights Division in 1969 and the settlement of that case (ii) Hull's pending complaint and (iii) documents not directly bearing on the Hull complaint but dealing generally with equal opportunity for women in the Celanese Fibers Marketing Co. Among those papers were some which I would regard as highly sensitive and confidential, including memoranda to and from counsel.

8. I do not know the precise number of documents which I assembled, but I would guess at nearly 100. Because they were too bulky to be carried easily, I put them in a shopping bag. That shopping bag was picked up by Delulio and returned to me by her at a later date. I believe that she told me that she had used the documents which I supplied

to her to prepare a memorandum and that she had copied some of the documents and attached them to her memorandum.

Lloyd E. Sims Jr.

LLOYD E. SIMS, JR.

Sworn to before me this

15th day of April, 1974

J. David McCalmont

J. DAVID Mc CALMONT
Notary Public, State of New York
No. 60-7792265
Qualified In Westchester County
Certificate filed In New York County
Commission Expires March 30, 1976

EXHIBIT A, ANNEXED TO FOREGOING AFFIDAVIT

Memorandum of Meeting, Lloyd E. Sims, Jr.

dated April 2, 1973

EXHIBIT A

INTERNAL LETTERHEAD

| TO: (NAME, OFFICE SYMBOL, ROOM NUMBER, BUILDING, AGENCY/POST) | | REFERENCE NO. |
|---|---|---|
| TO The Files | | |
| FROM: (NAME, OFFICE SYMBOL, ROOM NUMBER, BUILDING, AGENCY/POST) | REFERENCE NO. | DATE |
| E. Sims | | 4/2/73 |

SUBJECT: Marilyn Karnes

Those present: D. Delulio, E. Riebel, E. Sims, R. Wright, B. Wylie

The meeting was to review the current status of Ms. Karnes and to determine the next course of action.



ONLY COPY AVAILABLE

**AFFIDAVIT OF SIDNEY J. BROCKMAN**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - - x

JOAN HULL on behalf of herself and others similarly situated,

Index No.
73 Civ. 3725

Plaintiffs,

- against -

CELANESE CORPORATION; CELANESE FIBERS MARKETING CO.; JOHN W. BROOKS, VERNON E. JORDAN, GRAYSON M-P MURPHY and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION; and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO.,

AFFIDAVIT

Defendants.

- - - - - - - - - - - - - - - - - - - - - - - x

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK )

SIDNEY J. BROCKMAN, being duly sworn, deposes and says:

1. I am Manager of the Minority Relations Department of Celanese Corporation and have held this position at all times mentioned in this affidavit. I submit this affidavit in response to certain of the statements which appear in the affidavit of Donata Delulio, sworn to April 9, 1973.

2. In February 1973, Robert Ciovacco, of the Celanese Law Department, left the company. I had consulted with him on problems relating to the responsibility of my department. At that time, I asked my superior, Benjamin Sands, who we would go to now that Ciovacco was leaving. He told me that Donata Delulio was replacing him in so-called "EEO" matters. Mr. Sands, who is stationed in Charlotte, spends approximately two days per week in New York.

3. From February 1973 to in or about September 1973, I consulted with Delulio regularly, just as I had with Ciovacco, on day-to-day problems in my department. When Delulio was in New York, I spoke to her on the average of three to four times per week on such problems. Among the matters which I discussed with her were equal employment opportunity for women.

4. I note that Delulio states that she was never supplied with any documents from the Minority Relations Department and had no access to department files. This is not so. To my knowledge, Delulio was supplied with numerous documents from our files by either me, or other members of the Department.

5. Delulio also states on page 16 of her affidavit that she never consulted with corporate officials with respect to Celanese's defense of the Hull matter before the New York State Division of Human Rights. She also states on page 20 of her affidavit that she "did not attend a single meeting" with respect to that matter. This is also not so. I attended at least two meetings on the matter at which Delulio was present together with myself and Messrs. Sims, and Wylie among others. Both meetings were lengthy - at least one hour in length. I also attended the luncheon meeting at the Biltmore Hotel which is referred to in Mr. Wylie's affidavit. At those meetings we discussed in full the facts relating to Hull's complaint and Celanese's defense of the matter. We also discussed at those meetings specific allegations made by Hull, and Celanese's answer.

6. In or about June 1973, Delulio came to Mr. Sands in New York. I was present. She said that she was preparing a paper on the Hull case and other related matters. She asked for certain documents dealing with affirmative action, which I later sent to her. Sometime later, she gave Mr. Sands a rough draft of her memorandum and asked us to review it and make comments, which we did.

Sidney J. Brockman
SIDNEY J. BROCKMAN

Sworn to before me this
16th day of April, 1974

James K. Nevling Jr.

JAMES K. NEVLING JR.
NOTARY PUBLIC, State of New York
No. 31-8126820
Qualified in New York County
Commission Expires March 30, 1976

## AFFIDAVIT OF BENJAMIN H. SANDS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - -x

JOAN HULL, on behalf of herself and others similarly situated,

Plaintiffs,

Index No.
73 Civ. 3725

- against-

CELANESE CORPORATION, CELANESE FIBERS MARKETING CO., JOHN W. BROOKS, VERNON E. JORDAN, GRAYSON M-P-MURPHY and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO.,

AFFIDAVIT

Defendants.

- - - - - - - - - - - - - - - - - - - - - - x

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK )

BENJAMIN H. SANDS, being duly sworn, deposes and says:

1. I have read the affidavit of Donata Delulio, sworn to April 9, 1974, insofar as it pertains to my affidavit in support of defendants' motion.

2. I re-affirm the statements made in my original affidavit.

3. I wish to clarify certain of my statements. Delulio may not have used the expression "equal opportunity lawyer". That expression is mine. What I meant to convey was that Delulio told me that she was the lawyer to whom I could address questions on matters relating to equal opportunity.

**AFFIDAVIT OF BENJAMIN H. SANDS**

4. Delulio also possibly misunderstands my use of the expression, "the Hull case", which refers to any aspect of the Hull matter stemming from her complaints to government regulatory bodies. Likewise, my reference to a "Hull complaint" is intended to encompass complaints made by her to such governmental bodies and not only or necessarily to a court.

Benjamin H. Sands
BENJAMIN H. SANDS

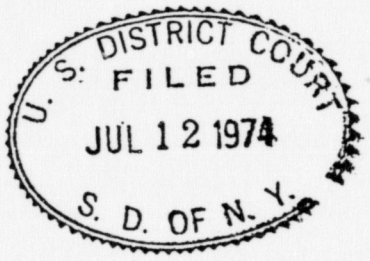
Sworn to before me this
16 day of April, 1974

James K. Nevling

JAMES K. NEVLING JR.
NOTARY PUBLIC, State of New York
No. 31-8126820
Qualified in New York County
Commission Expires March 30, 1976

TRANSCRIPT OF HEARING
JULY 11, 1974, ON COURT'S MOTION
TO DISMISS PLAINTIFF'S COMPLAINT

ib




UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| Joan Hull, et al., Plaintiff | |
| vs | 73 Civil 3725 |
| Celanese Corporation, et al., Defendants. | |

April 19, 1974
3:30 p.m.

Before:

HON. RICHARD OWEN,

District Judge

Appearances:

RABINOWITZ, BOUDIN & STANDARD, Esqs.,
Attorneys for Plaintiffs
By: Victor Rabinowitz, Esq.

ROSENMAN, COLIN, KAYE, PETSCHEK, FREUND & EMIL, Esqs.
Attorneys for Defendants
By: Gilbert S. Edelson, Esq.,
Charles A. Crum, Esq., and
Nadia Colin, Esq.



SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

jb

(Case called.)

THE COURT: Mr. Rabinowitz, I have read the papers and the affidavits and the briefs and I can't say that I have every word in mind but I have been through them with some care. I am quite concerned as to how, in view of the Emile decision in the Second Circuit within the last year so so, Miss Delulio can possibly be an intervening plaintiff.

If you would kindly address yourself to that question at the outset, because that, to me, seems to be almost so clearly against her that I have had to examine and reexamine my thinking here to see if there was something that I was missing.

MR. RABINOWITZ: Your Honor, I think the Emile case is distinguishable on a number of grounds and I think it important to place this case in the proper setting.

The first thing, as I recall the Emile case, and I reread it this morning, in Emile we had a situation which crops up often enough, in which an attorney for client A later represents client B in a suit against A.

THE COURT: Involving potentially overlapping facts.

MR. RABINOWITZ: Yes, and in that situation I do not believe that there is any legally cognizable injury to the attorney in the case. The attorney is being told "because



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of certain activities that you have engaged in and certain professional activities that you are engaged in you will not be permitted to represent the conflicting interest because the Canons of Ethics say you cannot represent the conflicting interests in this situation" and no cognizable harm -- I suppose it's always a harm to a lawyer if he is deprived of a client but that is the only harm that is done to the lawyer. But this is not that situation at all.

Delulio is not acting here as a lawyer but a client and to say that the federal court will be closed to Delulio for the prosecution of her claim against anybody in the world because she is a lawyer and once represented the defendant it seems to me is a totally different situation.

THE COURT: I think you go farther than you have to. Of course, the point is not before me but let us assume that Miss Delulio, to have a name pop into mind, went to Louis Nizer. I do not see that there is any problem with Louis Nezer representing her in this Court but the problem is she didn't go to Louis Nizer; she went to you and you were already representing Miss Hull where she worked and she said "I want to join in the Hull case."

It seems to me if she had gone to a thoroughly independent lawyer and said "I want to assert my action against Celanese" -- I am not going to pass on it because it


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is not before me, but I can see that that is a different situation. But she didn't do that.

MR. RABINOWITZ: I have given, I assure your Honor must realize, we have all given a great deal of thought to this case.

THE COURT: I know it's been the subject of firm meetings.

MR. RABINOWITZ: The subject of even more firm meetings than appear in the papers, and it is a matter which we have discussed at considerable length but with all of this, I confess that I do not see how Miss Delulio is to be deprived of her right to choose her lawyer.

Now, I admit that this is not the same level, not quite the same level of right as the right to sue. I think the right to sue is one that is guaranteed by the United States Constitution in many respects and while the right to see, to choose a lawyer, is also guaranteed, I would say that it is probably not quite of the same level.

But I can't see -- if the only issue, if the only problem in this case is whether Miss Delulio has a right to intervene as a representative of the class but she may not do so through us as counsel but she has to get some other lawyer to represent --

THE COURT: No; not intervene; bring her separate



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lawsuit. Bring a separate lawsuit. As I say, I am not passing on the merits of that, either, but I see a distinction that could be drawn there.

MR. RABINOWITZ: I see a distinction that could be drawn but with all respect I don't think it is a valid one.

In the first place, I think what I have said, and I take it that your Honor doesn't disagree with me, is that Deiulio has a right to sue her employer and she is not disqualified from suing her employer by virtue of the fact that she was house counsel for the employer.

THE COURT: I would think that you are correct in that part.

MR. RABINOWITZ: The next question is whether she may sue as a representative of the class, or I would like to address myself to that question next and I will get to the other question in a moment.

Now, the United States Supreme Court has held in a number of cases, the leading one of which is NAACP against Button but it runs through a large number of other cases which the Court has decided recently, which has held that the first amendment right to petition the government and the first amendment right of freedom of association includes the right to bring a lawsuit together with other people, particularly and maybe only where the issue involved is a great social issue.



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Now, that line of cases, as your Honor will recall, was first developed in connection with discrimination against blacks particularly in the school system where the NAACP had carried on extensive litigation throughout the South, resulting in an attempt by the State of Virginia to prevent it from continuing to do this kind of activity, to attack segregated schools and other forms of discrimination against blacks.

I don't see any distinction between discrimination against blacks and discrimination against women. Both are protected by the Constitution, both of them by Title 7, which is under consideration here, and Delulio has a constitutional right and I really underline that, because it's essential to the position I am making and taking, to associate with others to protect this great constitutional right for herself and for others.

In the Button case, as I say, and in cases since then the Supreme Court went into an extended discussion to the great advances, social, political advances that have been made in the United States because of this right on the part of people to associate for the purpose of bringing a lawsuit to protect civil rights.

THE COURT: Let me just bump up against a hard fact. Take Miss Delulio's letter of January 29, 1974, to the Bar Association. In that she says: "During the six months



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that I worked on that case" -- this is the Hull case -- "I studied the general regulations of Equal Employment Opportunities Commission, its procedures in the law and sex discrimination generally. I obtained specific information from the personnel department of the division concerning salaries and hiring practices. I attended" -- it says "on" but it's either and or one -- "interview of the employee's superior and attended one interview of another division employee. I participated in a conference with outside consultants hired by the corporation to prepare statistical information regarding employment within the division. I obtained interoffice memoranda and prepared a memorandum myself regarding the case."

Now, are you saying that the Constitution gives her a right to come to you, charged with all that information, just because she has a right to associate with others?

MR. [illegible]: Your Honor, no. What I do say is, and counsel for the defendant makes the point, and I agree with it, what I do say is that this involves a problem and it is a problem of the balance of rights here: the balancing of the right, on the one hand, of Delulio under the Button case and related cases to associate with others to bring being the kind of a lawsuit that she has brought on her own behalf and on behalf of her sisters in the company, a



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balance of that together, and on the other hand, a consideration of the rights of the defendant but, balancing means balancing. It doesn't mean that you recite on the one hand there is this kind of a right and on the other hand there is this kind of a right and this kind always outbalances the other right.

Balancing means that we must consider the facts. Balancing means that we must look at the relevant facts here and determine on the basis of those facts which of these two rights, both of them very important rights I will concede, shall prevail, and that requires a consideration of the facts.

Now, Delulio has said, and she has gone into much more detail in her affidavit than she did in the letter to the Bar Association -- I might say incidentally, your Honor, that somebody wrote a letter to the Bar Association on her behalf within the last two or three days which I had intended to bring with me today and I think it ought to be submitted to your Honor --

THE COURT: She is asking reconsideration?

MR. RABINOWITZ: Yes, sir, and of course we haven't heard. We just sent it this week. It summarizes generally speaking what we say in our papers. I don't think you will find anything new in it but I thought I would mention it.



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Delulio says, and it is not denied, that she spent a maximum of 40 hours altogether in a period of six months on this case; that much of that time was spent in looking up law, nothing particularly confidential in looking up law; that she looked at --

THE COURT: Mr. Rabinowitz, let's not take her affidavit, which is a selfserving affidavit, and use that as the basis. Let's use the fact that she obtained interoffice memoranda and prepared a memorandum, interviewed people in the company, got salaries and hiring practices. This is binding upon her.

MR. RABINOWITZ: Your Honor, remember, now, we are talking about balancing of rights here. This is a federal civil proceeding. It is not a criminal case. The discovery rights on the part of plaintiff here are very, very broad.

We will get, if we are ever permitted to go ahead with this discovery, which we would have done long since had it not been for this diversion, we will get all those salary schedules. I suspect we already have the salary schedules. We will get -- not from Delulio -- we will get the law, we will be able to inquire of the company as to all of the things that are relevant. I assume that the company did not commit fraud here; there is no charge of that; that there are no skeletons in the closet that the company is trying to cover



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un; there are no destroyed documents; there are no hidden secrets.

The defendant has acted here almost as though there was some great body buried somewhere and they were intent on preserving that great secret.

Well, I don't believe there is any body buried anywhere. I don't believe there are any great secrets or any great confidences here. We have offered and I renew the offer to let your Honor look at this memorandum which Mr. Edelson waves, either figuratively or once even literally, before your Honor, to see whether in your Honor's opinion this contained that kind of confidence and that kind of secret and that kind of privileged information which will deprive her of the constitutional right that I was talking to, and I will tell your Honor I am taking a chance in doing that because I have never seen that memorandum and I don't know what is in the memorandum and if I submit it to your Honor and your Honor comes to the conclusion that this is highly confidential, well, that's a risk I am going to have to take.

THE COURT: Well, Mr. Rabinowitz, let me ask you this, because we could discuss the theory on this all afternoon: Is your ultimate position that she has a constitutional right to associate with others to seek redress of grievances?



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MR. RABINOWITZ: Yes.

THE COURT: And you say that I must draw, I just be the one that balances that right against the provisions binding upon her under the Canons of Ethics and that is how my task is defined for me, as you see it?

MR. RABINOWITZ: Yes, as I see it.

THE COURT: I was going to ask Mr. Edelson if he had anything to add or subtract from that test as you have it.

MR. RABINOWITZ: Just so he may answer everything together, let me just say one more thing about that.

As I read these affidavits, I think I am understating it when I say that they are in conflict. There is a very, very wide divergence of view as to what happened and although I don't like hearings in the middle of a case, because it is expensive, it is slow, it stops everything else while you have to pay attention to what I consider to be a totally peripheral issue here, it may be that if your Honor finds that there is such a conflict of facts here as to make it impossible to decide who is telling the truth that a hearing will be required.

As I say, I am not arguing for that. I don't like it because it is burdensome on everybody -- on the Court, on the parties and I say it has a financial consequence and all the rest of that but if that is what we ultimately have to



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get to, it may very well be that that is what we will get to because I find the affidavits in conflict. I obviously don't look at them totally objectively but it is perfectly obvious that there is a big conflict here.

THE COURT: Just on this one narrow point for the moment. I will get to the other points later. This is on what Mr. Rabinowitz said is their highwater mark.

MR. EDELSON: We don't agree that there is an uninfringeable right to sue. We think there has to be a balance and, as we read Button, I think it supports us because I think the Court points out in that case there has been no showing here of serious damage to a professional reprehensible conflict of interests which rules against solicitation. In other words, the Court was careful there to point out there was no conflict of interest involved in that case and there is a conflict of interest involved here.

We are here because there is a risk of disclosure which the Canons clearly preclude. We are here because we think that there is a strong countervailing right to a right to intervene. We don't deny or we don't seek to deny the right of a lawyer to sue her employer or her client at any time. We don't say and we don't need to say that under no set of circumstances could Delulio come in here and sue Celanese. We say that on the facts of this case, having



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represented Celanese in this very case, she can't do it. She may have the benefit of a class action, a judgment, but she can't come in herself.

THE COURT: You wouldn't disagree with me that under certain circumstances one can conceive of her bringing her own separate lawsuit.

MR. EDELSON: One could under certain circumstances.

THE COURT: The Bar Association said no even to that, and I am not passing on hat.

MR. EDELSON: I agree with you. I don't think we have to go as far as the Bar Association went and I don't think that is in issue here.

I think there is a narrow issue here which is the right to intervent in this case.

THE COURT: Mr. Rabinowitz?

MR. RABINOWITZ: I would like to call your Honor's attention to a decision which is not in the briefs because it was in the advance sheet in my office this morning, although I think it was on the front page of the Law Journal a few weeks ago. The name of the case is Silva Chrysler-Plymouth against Chrysler Motors, 370 Fed Sup 581, decided on November 16th in the Eastern District, in which Judge Weinstein presented with the problem in which a lawyer who was a member of a firm which represented Chrysler Corporation, Kelley.



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Drye, left that firm and then represented a dealer in a lawsuit against Chrysler Motors and much of the same kind of argument was made.

Now, that is a much --

THE COURT: In that case, I seem to recall reading about that, wasn't there a showing that this was a young lawyer who had never worked on the account and this was --

MR. RABINOWITZ: He had worked on the account. It is true he was a young lawyer.

THE COURT: But never worked on this matter. He never worked on the matter in which he eventually took representation.

MR. RABINOWITZ: Well, Chrysler Corporation claimed that he did work on closely related matter. That was the issue.

THE COURT: But not this matter.

MR. RABINOWITZ: Not in this particular case but in related matters and they claimed that as a result of his work in various Chrysler matters, he got confidential information concerning Chrysler's method of doing business and Chrysler's setup and a lot of other highly confidential matter and the point I am making is that Judge Weinstein did, in that case, what I think has to be done here, namely, there has to be an examination of the facts and not merely a



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categorical rule.

Now, the Emile case and the rule that Mr. Edelson argues for so vigorously is an absolute rule. It doesn't permit any examination of the facts at all. It says as long as there -- incidentally, I think that has up to this point been the Bar Association's position also -- as long as there is the possibility, as long as the situation is such that there is even a remote possibility that there is a conflict of interest or that there might be confidential information which somehow or other trickles through to the lawyer, that he cannot represent another client.

In the first place, I repeat the point I originally made. It involves a lawyer's status qua lawyer, not a lawyer's status qua plaintiff but, aside from that, there was none of the constitutional problem raised in the Emile case and the Richardson case, the Doe case and all of the other cases which talk in terms of an absolute right.

I agree, Mr. Edelson, aside from the fact that he cites ACA against Dodge which I had understood had been overrules but he cited other cases which have not been overruled indicating that ever constitutional rights have to be balanced and I think they have to be balanced. That is what I say. They have to be balanced and I think that on balance here, your Honor will find that her connection with this case



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was trivial; it didn't involve anything confidential. If the Emile rule applied, then I agree and I think we are in a tough spot but I don't think that the Emile rule does apply for precisely the reasons I have given.

THE COURT: Well, Mr. Rabinowitz, I am going to rule on Miss Delulio that the Emile rule does apply and I am going to deny her right to intervene.

Now, to the extent that that disposes of certain of the requests under items 1, 2 and 3 of the notice of motion we can then go forward from there.

I do, then, come to what I regard as a difficult problem, also, which you have shadowed in your earlier discussion and I am not sure but what it doesn't go deeper than any of the papers have revealed so far before me. I am concerned at just what -- I can use a criminal word -- taint has attended her intrusion into this case, if I can call it that for lack of a better phrase.

I think it would have been very much more preferable, and I am sure you possibly would agree with me, even ten minutes ago, if Miss Delulio had not come to you and said "I would like you to represent me."

I am concerned with the extent to which she has advertently or inadvertently passed on information to anybody that has come into the possession of any member of your firm



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without in any way indicating any wrongful intent on anybody's part. I am concerned even farther with this and this gets to the status of these three plaintiffs as class plaintiffs. I am concerned as to whether they are not tainted by their association with her and therefore have become inappropriate class plaintiffs.

For example, let me give to you, and this is something that is going to require substantial consideration on my part, so I am not doing any more today than exploring the problem with you, but she at one point, according to her, according to the affidavit of Mr. Johnson, who was her superior, was it? -- in any event, she goes in to her superior's office to discuss a problem in relation to her employment. There is with her Miss Hull. Her boss says, "What are you doing here," and Miss Hull says "I am a witness."

Now, this fact is not denied in the papers, although Miss Delulio does comment that she is not traversing everything and it would be a substantial task to traverse everything.

MR. BABINOWITZ: That is not denied; that has happened.

THE COURT: But assuming that is true, and I don't bind her to it, we then come down to the next question which is, what did she and Miss Hull talk about before they went in



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that room and why did they have a conversation about her being a witness and what was the substance of that.

Did Miss Delulio say "Joan, I would like to have you there so if these people do X, Y and Z to me I want you to know about it"?

MR. RABINOWITZ: Yes. I think that it would have been appropriate to have called in Miss Hull or to have called in anybody else that she wanted to -- I suppose she could have called in a lawyer, except that I doubt whether her employer would have spoken much before a lawyer. She felt that she was, to be colloquial, being framed.

THE COURT: I don't disagree with you at all. I am just concerned as to the extent to which Miss Delulio's knowledge as a lawyer of Celanese has permeated the attorneys for the remaining plaintiffs and the remaining plaintiffs themselves.

MR. RABINOWITZ: Your Honor is posing a proposition here which taints Miss Delulio to the point where not only is she herself tainted but she taints everyone she comes into contact with and the only protection that Celanese could possibly get against that situation, if their argument and the one your Honor hypothesizes is accurate, would be to lock Miss Delulio up until the termination of this lawsuit, because there is nothing to prevent her from continuing to talk to



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her friends and her friends may include Hull and it doesn't make any difference whether she is represented by Nizer; it doesn't make any difference, your Honor, if somebody else comes in --

THE COURT: Yes it does because she and Hull were talking together about her participation in this very lawsuit.

MR. RABINOWITZ: How do we know that she is not going to talk to the next plaintiff that comes along?

THE COURT: At that point, you have a different situation altogether. This is what I find very, very troublesome in this case.

MR. RABINOWITZ: Your Honor, what we are doing here is making 3 or 4 inferences -

THE COURT: I agree.

MR. RABINOWITZ: One on top of the other. The first one is that she had confidential information at all. Now, your Honor, adopting the Emile rule, has said it doesn't make any difference.

THE COURT: For that purpose I agree.

MR. RABINOWITZ: Then we go on to the next step, namely, to disqualify Hull from being a member of the class and to disqualify us from representing members of the class, you are assuming two things -- number one, that she did have --



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THE COURT: I am not assuming that at all but I am reasoning from affidavits of Mr. Edelson and others that if their affidavits are truthful, then she did possess confidential information.

MR. RABINOWITZ: But she says no. She says t'aint so.

THE COURT: So then we have an issue of fact.

MR. RABINOWITZ: Exactly. Of course we do but it is not an issue of fact to which the Emile rule applies because all that the Emile rule says is that --

THE COURT: I am not talking about that. I am talking about whether or not in fact --

MR. RABINOWITZ: Except that you are piling, as I say, inference on inference. Now, the first question will be, the first question of fact that has to be decided is, does she have confidential information. The next question of fact that will have to be decided is, has she passed that confidential information on to Hull.

THE COURT: Exactly.

MR. RABINOWITZ: Then the next question is, I suppose, whether she or Hull has passed that confidential information on to us.

What is happening in this case is that because of her activity we are not only depriving her of her constitutional



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right but we are now depriving Hull of her constitutional right.

Now, I must confess, your Honor, that this is an attenuation which goes far beyond any case that I have seen. Hull up to this point has had an undisputed right under Title 7 and the Constitution to bring this lawsuit as a member of the class. Now that right is being taken away from her because two inferences are being made -- one, that Delulio had confidential information; second, that she passed it on to Hull and I suppose the third --

THE COURT: No. You are going to the ultimate and I am only raising a question. I am trying to determine whether if the answer to my questions turned out to be as you have last stated, whether Hull hasn't in fact been --

MR. RABINOWITZ: You mean Hull's constitutional right to bring a lawsuit, she can lose that?

THE COURT: No, not to bring a lawsuit but to be the representative plaintiff in a class action.

MR. RABINOWITZ: She is not a lawyer. She is not bound by any Canons of Ethics.

THE COURT: That is correct, but I have to certify that she is a proper member of the class to represent a class.

MR. RABINOWITZ: And why can't she represent the members of the class?



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THE COURT: Because if she is possessed of information that was wrongfully given to you -- if it were to turn out that Miss Delulio turned over to her all the information she had gotten at Celanese as a lawyer, I think you would agree with me that Miss Hull could not be a representative for the class.

MR. RABINOWITZ: I don't agree with you. I don't know why she couldn't. I think that Miss Delulio might be subject to disciplinary action but Miss Hull is not going to be and I don't understand why she would not --

THE COURT: You mean if she could prosecute an action against the employer using in that prosecution information obtained in violation of the Canons of Ethics --

MR. RABINOWITZ: But she is not bound by the Canons of Ethics, your Honor, and if there is privileged information, if the information is privileged, she can't introduce it.

THE COURT: That would be correct but the question is then whether she is a proper class plaintiff. I am not even addressing a question of plaintiff. I am saying class plaintiff.

MR. RABINOWITZ: She has violated no law. She has violated no --

THE COURT: Mr. Rabinowitz, I am not saying she has. I am saying I am troubled by such pieces of evidence as would



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lead me to feel that she and Miss Delulio are very close, that they have conferred on this in extenso, that they were so close that when Miss Delulio wanted a witness in this case to be able to testify to a conversation with a superior, she brought Miss Hull in with her.

I am just wondering whether an exploration of these ties of the iceberg wouldn't reveal an awful lot that has a bearing upon the propriety of Miss Hull being a class plaintiff. Plaintiff she may be; class plaintiff is something that requires Court certification.

MR. RABINOWITZ: Well, I have never seen a case -- not only have not seen a case that went so far. I don't even recall --

THE COURT: I think you and I would agree that this is a most unusual situation.

MR. RABINOWITZ: Well, there are lots of cases, obviously, in which this situation or similar situations have arisen in which lawyers have represented former clients or represented or acted in opposition to the interests of a former client. Both of the briefs cite, obviously, a great many cases.

But to say that Hull, who has violated no obligation to anyone -- I really am sort of at a loss to answer what seems to me, with all due respect, your Honor, which



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seems to me such an extreme position that Hull, who has violated no rule, who has not been bound by the Canons of Ethics, who has acted, as far as we can tell here, in an exemplary fashion, should lose constitutional rights, and I think the right to sue as a member of a class is a pretty important right --

THE COURT: Mr. Rabinowitz, let's get the fact issues out of the way. Let's assume that Miss Delulio gave Miss Hull that copy of the memorandum that she prepared on the Hull case when she was an attorney in the law department of Celanese. Let us assume that.

Miss Hull is in possession, now, of such a memorandum: let us assume that. Do you feel that she in good conscience could be a representative plaintiff in a class action at that point?

MR. RABINOWITZ: Well, I think she could but I don't think it happened, so --

THE COURT: I mean, let's stay with that, because this is the area that troubles me.

MR. RABINOWITZ: Well, I will tell you why I think this -- in the first place, I say it didn't happen and, in the second place, I don't believe -- I am basing this on what I have been told -- that there was anything confidential in that memorandum and I think that that is a matter



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of considerable importance.

THE COURT: This may require a hearing, may it not?

MR. RABINOWITZ: Well, it may. Again, I am not happy about interlocutory hearings of this sort but if your Honor feels that it requires a hearing, then we will have to do it.

THE COURT: Let me ask Mr. Edelson about this.

MR. EDELSON: Your Honor, let me speak to the so-called, if I may, issue of fact about whether Delulio has confidential information -- that is to say whether she has information which is either privileged or which may be embarrassing to her client and confidential information and secrets goes beyond just mere privileged information.

I think it is ridiculous to argue on the basis that she has none. The undisputed facts show that she does.

She worked on the case for six months; she obtained information about salaries and hiring practices, as a lawyer. They gave her this. She attended at least three meetings that she admits in her letter to the Bar Association, two of which were interviews of persons presumably with knowledge of the facts, as a lawyer, again, for Celanese.

She obtained memoranda, and I will discuss that in a minute, and then prepared a memorandum regarding the case. Miss Delulio says that she worked on the case for



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forty hours. We think that there is substantially more. My contemporaneous diary takes her up to a certain date that her memory does not.

Now, in July of 1973 Miss Delulio prepared the 20-page memorandum in which she reviewed the facts and she provided what she called a legal analysis of the status of the matter and she made what she calls recommendations relative to pending litigation.

In her memorandum, Miss Delulio says in so-many words that I made a thorough review of the files of the personnel department and of the Celanese law department relating to the Joan Hull matter.

Now, how can any lawyer make a review of the lawyer's files in a case and then say that there is no confidential information? We think that along, her own words, demonstrates conclusively that there is confidential information. I think if I went through Mr. Rabinowitz' files on this case I would acquire confidential information. I think if Miss Delulio went through the Celanese law department files on this case, the lawyer's files, she acquired confidential information.

By definition, your Honor, the issue really is not whether but how much, and what it was.

Now, the notion -- and her own affidavit, I might



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add, shows her in attendance at about a dozen meetings on the case at which witnesses were interviewed.

I have and I will hand up to your Honor a memorandum of a meeting prepared by my colleague, which was held on September 14. I will hand up the front page of the memorandum only because the rest of it is privileged -- an interview conducted of a witness, Mr. Clark, who was a former personnel director, with facts of the case and that shows Miss Delulio present at that interview in preparation for this case.

I know you can't deny that confidential information was acquired in the course of the meeting. That was the purpose of the meeting.

Not only that but her activities really went beyond the case. Three Celanese executives swear that she was at a meeting at which they discussed the current status of Karnes, another one of the proposed intervenors. There is a memorandum which places her at that meeting.

THE COURT: Doesn't she say in one of the affidavits that she was there when the company discussed that they would like Karnes to quit?

MR. [illegible]: That's right, and then she says, I was told that the company wanted Carnes to quit. I think that is a disclosure that she had no right to make. The issue is not really whether Miss Delulio has confidential information



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because that can't be denied, but we are supposed to come into Court and disclose the things and I think that the courts have uniformly held that no client should be put in that kind of a position when attacked by its own lawyer.

MR. RABINOWITZ: First of all, any time --

THE COURT: You are saying, then, that I have to consider the subsidiary questions almost as a matter of law, rather than a matter of fact.

MR. EDELSON: I think there is enough to show the acquisition of confidential information. May I add, Miss Delulio says, "I don't have any confidential information." We think that as a matter of law on the undisputed facts in the affidavits he does and it just defies belief; the denial simply defies belief.

I think a review of the Celanese legal files is in and of itself enough; attendance at the meetings which can't be denied is enough. Miss Delulio says that "I compartmentalized my mind; the only things I talked about are things that I found out apart from my lawyer relationship to Celanese." You know, I don't think it's possible to compartmentalize your mind. I think that especially when her activity as a lawyer, as an employee -- they are closely interrelated -- I think there is a presumption here that when she talked about the case, the so-called pattern of practice, that she made



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full disclosure of her knowledge, of everything she knew and she couldn't possibly separate this fact she learned when she talked to so and so, not as a lawyer but in fact she learned when she sat in at the meetings. "And besides, it is not confidential." I just don't think you can make that kind of a separation.

I think there is a presumption here that when she talked about what she knew, she talked about everything she know; that whole world of facts that is in her mind.

THE COURT: I don't know that she would talk about everything, but I certainly agree with you that a person is likely to blur the line as to these things, just through faulty memory, what was learned one way and what was learned another.

MR. RABINOWITZ: It may be that I am unusual but I compartmentalize my mind every time I go home and talk to my wife about what I did during the day and I tell her that I saw people and I did certain things and I refrain from telling her things which in my compartmentalized mind are privileged or confidential and every lawyer does that: he must do it; it's part of his profession; it's part of his business.

It is impossible to go through life without ever mentioning what it is that you do and we all compartmentalize and we do not talk about the things which in our opinion --



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obviously it's the only opinion we have to go by -- are confidential or which are, even worse, are privileged and we do it all every single day and I can see nothing unusual about it.

It seems to me absolutely inevitable and I don't understand how any lawyer could possibly survive in the society if that were not true, if he did not learn, and it's not such a hard thing to learn, either, that there are certain things that you talk about and certain things that you don't.

THE COURT: I know but, Mr. Rabinowitz, I am sure you have run across lawyers, and I am drawing no inferences now against anybody, but you run across lawyers as to whom you said they can't keep their mouth shut.

MR. RABINOWITZ: I have run across lawyers who stole clients' monies.

THE COURT: I can't draw an inference as to Miss Delulio's compartmentalizing or yours.

MR. RABINOWITZ: No, except that counsel is asking you to.

THE COURT: Suppose I were to start off here by permitting a deposition of Miss Delulio as to conversations with others concerning this. I am troubled as to how to get into this without getting her into a disclosure in the course of deposition as to what is confidential in order to explore



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what was said and what was not said.

Is it appropriate to take this one bite at a time and see how far we get?

MR. RABINOWITZ: If your Honor thinks that is appropriate, I am willing to do it.

THE COURT: I would accept any suggestions here because this is a very troublesome decision for me.

MR. EDELSON: We have a problem with the attorney-client relationship, that at any such deposition which goes to what Miss Delulio told her lawyer --

THE COURT: Mr. Edelson, the problem I have on the other hand is that I certainly don't want to disadvantage plaintiffs, who are presently in a proceeding with a lawsuit, nor do I want to disadvantage a law firm without a showing of actual receipt of information that they had no business getting.

I hasten to say that I do not find any fault on anybody's part, here. I think that this is a very unfortunate situation, starting the day that Miss Delulio walked in the door of your law firm.

MR. RABINOWITZ: I am not agreeing.

THE COURT: Well, in any event --

MR. RABINOWITZ: It has complicated the lawsuit.

THE COURT: It has complicated your life and it is



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going to complicate mine, that's for sure, but I certainly am not going rule, as far as my present thinking is concerned, that a law firm is disqualified, without come kind of a showing that there in fact has been some disclosure to them.

Now, how do we handle that?

MR. EDELSON: Your Honor, I have a problem. You see, I am not sure that I agree with your Honor on the law because of the difficulty with the facts. Here we are in a situation where Miss Delulio says "I haven't disclosed anything;" counsel says "we haven't received anything," and I think that there is good faith. The problem, of course, is that counsel doesn't know where the facts came from. That is to say, Miss Delulio may have acquired a fact in the course of having heard it from the witness and repeated it to counsel in perfectly good faith, but there has been a disclosure.

How, how do we prove what she has said to her lawyer? That involves -- not only that -- it involves how do we prove what she has said to the other proposed intervenors with whom she has discussed the case, and what they in turn repeated to their lawyers?

To do this, it means that we have to penetrate the attorney-client privilege with respect to Miss Delulio if we are to find out what was disclosed.

MR. RABINOWITZ: You mean the attorney-client



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privilege between myself and Miss Delulio?

MR. EDELSON: Yes.

MR. RABINOWITZ: I assume we can waive that.

MR. EDELSON: Do you waive it with respect to Hull, Karnes, Swet?

MR. RABINOWITZ: I think we may be able to but I can't do it without consultation, obviously.

MR. EDELSON: That is why I have to call to your attention, your Honor, there is, we think, a substantial presumption and we think as a matter of law that ought to be enough without the necessity of all these hearings and I hope that your Honor will give added consideration to that.

THE COURT: I am troubled about that being applicable here for other reasons.

MR. RABINOWITZ: Your Honor realizes, of course, that if Mr. Edelson's argument is correct, Delulio can't go to Mr. Nizer, either, because she can't sue at all unless she goes to Mr. Nizer and Mr. Nizer says, "Well, tell me the facts of the case," and she says, "I can't compartmentalize. I don't know which of these facts I got in my capacity as a lawyer --"

THE COURT: You may be putting your finger on the problem that the Bar Association put its finger on there in the second clause. I don't have to reach that.



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MR. RABINOWITZ: It's not before the Court but it is not only illogical but it is almost an inevitable inference from the fact that Delulio may have passed information on to me. Well, if she may have done that, because in all ignorance she can't compartmentalize and doesn't remember where she got it, so she also may not sue through some other lawyer because she may also pass on information to him.

THE COURT: That's right.

MR. RABINOWITZ: So, the result is, I am not even going into the question of her friends whom she also discussed the fact that Celanese is incorporated in Delaware to and did she learn this as a lawyer or did she learn this by looking at the stockholders' report. Well, she probably learned it as a lawyer. I don't know that that makes her -- I don't know whether she is allowed to talk about that or not but it just results in a prevailing taint not only as to Miss Delulio and her right to bring a lawsuit but everybody, everyone she touches. Typhoid Mary carried typhoid and those she touched got it but she, herself, was not susceptible to it.

But Miss Delulio doesn't even have that privilege because she is also tainted and, on counsel's theory, everyone, every lawyer she may hire, every co-plaintiff she may associate with or, for that matter, any co-plaintiff she may know in a separate lawsuit.



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Your Honor says that you are not passing on it but if your Honor adopts a proceeding here based on a rule of law that leads inevitably to that conclusion, then your Honor is passing on it and I don't think it's a viable rule of law.

MR. EDELSON: Your Honor, let me make one remark here. It seems to me just to conjure up hypothetically that if Miss Delulio went to Louis Nizer and said, "Look; they took away my chair because I am a woman and that is my case," it is possible that she could bring that case.

MR. RABINOWITZ: But that isn't her case.

MR. EDELSON: Why not just limit ourselves to what is before the Court in this case?

MR. RABINOWITZ: I must say, and let me add one more thing, your Honor, and I am now not addressing myself to Miss Delulio's right. The Emile rule -- I agree that under the Emile rule if that is applicable there is no way around it. It's a pretty bad rule from my point of view. As I said before, this is a civil action.

My guess is, and it's a reasonably informed guess, that we had in our files all of this information before we knew that Delulio existed. There had been hearings before the Human Rights Commission. They have given us access to their files. We know what the salary schedules are and the training procedures and the promotion procedures and all of



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this stuff, and all of that is residing in our office now and we got it before we ever met Delulio or had anything to do with Delulio and the same thing is going to be true about every other bit of information that is ultimately going to be gotten in this case through discovery, because a case of this kind, unless there is fraud some place and I don't for a moment believe that there is, a case of this kind is made up and your Honor knows, you look at the number of employees, you see how many of them are men, how many are women, what their classifications, what their wage scales; you look at the promotion opportunities that various people have, the tests they give, what the promotion and hiring procedures are and their wage scale and so forth -- that kind of record information -- and with that, you go to the Court and you say, "On the basis of this, there is discrimination."

You look at the insurance policy to see whether there is discrimination and several Courts have held recently on the pregnancy issue. That is what this case is. This is not a case of fraud, involving the SEC; this is not a case of violation of the anti-trust law, where there are secret agreements. It is not like Emile which, I believe, was a patent situation. It is nothing like that.

The whole case is made up on the basis of record facts which are taken from the company records and that is



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all that we are ever going to have and a lot of it we have and the rest of it we will get after we are permitted to finish our discovery, if we ever finish the discovery.

So, all of this made up thing about confidential information -- I don't blame Mr. Edelson for hypothecating this. I would do it in his place, too, but it is not real. All of this we get by discovery and, as I say, I think we have a lot of it already. We are going to need more.

We have made applications for further discovery. They have all been held up because of this situation that we are in now. We would like to get ahead with the case as rapidly as we can. We would like to have a class determination. We would like to do whatever else we have to do in order to bring this case to a disposition.

So-called confidential matter in this kind of a case, your Honor, is really nonexistent. However, I suppose it is conceivable that somewhere in here there may be some scrap of paper.

Incidentally, Mr. Edelson said if he looked through my files, he would find a lot of material that is confidential and I don't think that is true and any time he wants to take a look through my files, he can come over and do it. It's not very interesting.

THE COURT: Well, let me ask you this: I think



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we have gone over this very well and thoroughly and I much appreciate the assistance that you both have been to me. I would like to give each of you two weeks to give me your thoughts or more, if you would like, on how I should resolve, if I should resolve, the problem of should there be a hearing, should there not or need there not be a hearing.

MR. RABINOWITZ: On what we called the "taint" issue?

THE COURT: Yes, and if there is to be a hearing, how it can be conducted, protecting the various rights of one kind or another that exist under the attorney-client privilege, as opposed to any duty to pass on the facts having to do with the propriety of the plaintiff or as a class representative.

Therefore, to [illegible] extent that I have ruled on Miss Delulio's intervention, which has an effect upon several of the headings of relief in both of the notices of motion, I have passed on that. The balance of the notices of motion and the balance of the items I will reserve decision on.

MR. RABINOWITZ: Your Honor has not made any ruling or has your Honor made any ruling with respect to her right to bring a lawsuit?

THE COURT: I have not because that is not before me. I think I stated that earlier. I am not passing on that right at all.

MR. EDELSON: Does your Honor want written



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summation on this?

THE COURT: Yes. If you would like more time, I can give it to you.

MR. RABINOWITZ: We can do it in two weeks. We can do it in two weeks.

THE COURT: Let's make it two weeks from this coming Monday.

I thank you for your assistance.

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**OPINION AND ORDER**

**DENYING INTERVENTION**

FILED
U.S. DISTRICT COURT
MAY 6 11 40 AM '74
S.D. OF N.Y.

JOAN HULL, on behalf of herself and others similarly situated,

Plaintiffs,

-against-

CELANESE CORPORATION; CELANESE FIBERS MARKETING CO.; JOHN W. BROOKS, VERNON E. JORDAN, GRAYSON M-P MURPHY and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION; and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO.,

Defendants.

73 Civ. 3725 R.G.

#40671

United States District Court
S. D. New York
May 1, 1974

Victor Rabinowitz (Rabinowitz, Boudin & Standard), New York, N.Y. for Proposed Intervenor, Donata Delulio

Gilbert Edelson (Rosenman, Colin, Kaye, Petschek, Freund & Emil), New York, N.Y. for Defendants

OPINION AND ORDER

**Miss Donata Delulio, an attorney employed in the law department of defendant Celanese Corporation since 1972, claims that she has been damaged by various forms of sex discrimination by Celanese, particularly with respect to hiring, promotions and transfers, salary and**



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raises, training and education programs, public relations and client good-will activities.*

She moves for leave to intervene in this action, commenced in 1973 by Joan Hull, an employee of Celanese Fibers Marketing Company (CFMC) a division of defendant Celanese. Plaintiff Hull, seeking class action designation, alleges that Celanese, CFMC, two officers and three directors violated Title VII of the Civil Rights Act of 1964 by discrimination in employment on the basis of sex. Miss Delulio, however, suffers from an impediment which, in my opinion, is fatal to her motion. Specifically she participated as one of a number of Celanese lawyers in an active and substantial way in early stages of the defense of this very action.**

The facts as to her participation are well-summarized in Miss Delulio's own words in her letter to the Committee on Professional and Judicial Ethics of the

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*Celanese denies this and suggests that any employment disappointment on her part is due to disappointment on its part in her performance as a lawyer. (Hill aff., April 15, 1974 pp. 1-2).

**It would appear that Miss Delulio's work upon the Hull case terminated prior to any activity on her part to intervene therefor.

Association of the Bar of the City of New York seeking guidance:

> During the six months that I worked on [the Hull] case I studied the general regulations of the Equal Employment Opportunities Commission, its procedures and the law on sex discrimination generally. I obtained specific information from the personnel department of the division concerning salaries and hiring practices. I attended on (sic) interview of the employee's superior, and attended one interview of another division employee. I participated in a conference with outside consultants hired by the corporation to prepare statistical information regarding employment within the division. I obtained inter-office memoranda and prepared a memorandum myself regarding the case.*

Thus, there is no question that Miss Delulio is possessed of substantial knowledge and information as to the Hull case obtained as a lawyer in defending against it.**

To the foregoing, Miss Delulio unequivocally states that although she and Joan Hull and other plaintiffs have become social friends and although she has had conferences with Hull's attorneys (who are now

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*The Committee advised Miss Delulio in writing that in its opinion she should neither intervene in the Hull action, nor prosecute her own action.

**Miss Delulio concedes "It is possible that I might have evidence that would be protected by the attorney-client privilege..." (aff., April 9, 1974, p.3).

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her attorneys) concerning this case,* she has never revealed anything learned in confidence. Giving these statements full credit, and passing the requirement that a lawyer avoid even the "appearance of impropriety" in his professional conduct** nevertheless, the opportunity for inadvertent disclosure is clearly ever-present.

This seems to be a case of first impression, and research has disclosed no authorities directly on point. However, Emle Industries, Inc. v. Patentex, Inc., 478 F.2d 562 (2d Cir. 1973); Motor Mart, Inc. v. Saab Motors, Inc., 359 F.Supp. 156 (S.D.N.Y. 1973) and T.C. Theatre Corp. v. Warner Bros. Pictures, 113 F.Supp. 265 (S.D.N.Y. 1953), provide clear and sufficient guidance mandating a denial of this motion as a matter of law.

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*Plaintiff Hull, in her affidavit of April 8, 1974, states at p.2:

> "After [Miss Delulio] retained the Rabinowitz firm and made the decision to intervene in this action, I had closer contact with her. We have discussed the case between ourselves, amongst the other applicants for intervention and with counsel."

**Canon 9 of the Canons of Legal Ethics. This Canon alone is, in my opinion, sufficient to require denial of this motion, but given the facts herein I need not decide on "appearances" alone.

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In Emle, the Court stated at p. 570-1:

> Canon 4 implicitly incorporates the admonition, embodied in old Canon 6, that "The lawyer's obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed." Without strict enforcement of such high ethical standards, a client would hardly be inclined to discuss his problems freely and in depth with his lawyer, for he would justifiably fear that information he reveals to his lawyer on one day may be used against him on the next. A lawyer's good faith, although essential in all his professional activity, is, nevertheless, an inadequate safeguard when standing alone. Even the most rigorous self-discipline might not prevent a lawyer from unconsciously using or manipulating a confidence acquired in the earlier representation and transforming it into a telling advantage in the subsequent litigation. ... The dynamics of litigation are far too subtle, the attorney's role in that process is far too critical, and the public's interest in the outcome is far too great to leave room for even the slightest doubt concerning the ethical propriety of a lawyer's representation in a given case. These considerations require application of a strict prophylactic rule to prevent any possibility, however slight, that confidential information acquired from a client during a previous relationship may subsequently be used to the client's disadvantage.

**Further, the right to intervene is a matter addressed to the Court's sound discretion, Fed. R. Civ. P., Rule 24(b). Thus, even were the law other than I**

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conclude it to be, I would not in my discretion permit Celanese to suffer the possibility of unintended disclosure by Miss Delulio to other plaintiffs or their joint counsel of matters learned by her in confidence while working on this case as a Celanese lawyer.

As her "ultimate position",* it is urged that Miss Delulio has a constitutionally-protected freedom of association, citing N.A.A.C.P. v. Button, 371 U.S. 415 (1963). This position I find to be without merit. Miss Delulio is correct to the extent that N.A.A.C.P. v. Button, did strike down certain state regulations of the practice of law in conflict with "the First Amendment as absorbed in the Fourteenth..."** as "unduly inhibiting protected freedoms of expression and association.*** However, N.A.A.C.P. v. Button

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* THE COURT:
Well, Mr. Rabinowitz,...:
Is it your ultimate position that she has a constitutional right to associate with others to seek redress of grievances?
MR. RABINOWITZ:
Yes.
THE COURT:
And you say that I must draw, I must be the one that balances that right against the provisions binding upon her under the Canons of Ethics...?
MR. RABINOWITZ:
Yes, as I see it. (Minutes of oral argument pp. 10-11)

**371 U.S. at p. 444

***371 U.S. at p. 437

specifically excepted from the scope of its ruling a situation in which there has been a "showing of a serious danger of professionally reprehensible conflicts of interest..."*, which situation exists here. See also California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972) where, at p. 515, the Court stated:

> First Amendment rights may not be used as means or the pretext for achieving "substantive evils" (see NAACP v. Button, 371 U.S. 415, 444)...

For the foregoing reasons, both on the law and in my discretion, I deny the motion.

SO ORDERED:

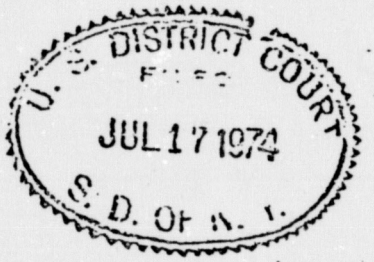
U. S. D. J.

*371 U.S. at p. 443

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**OPINION AND ORDER**

**DISQUALIFYING COUNSEL**




UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

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|---|---|
| JOAN HULL, on behalf of herself and others similarly situated, Plaintiffs, -against- CELANESE CORPORATION, CELANESE FIBERS MARKETING CO., JOHN W. BROOKS, VERNON E. JORDAN, GRANSON M-P MURPHY and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION, and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO., Defendants. | #40976<br>73 Civ. 3725 |

OPINION AND ORDER

Defendants move for an order disqualifying plaintiff's counsel, Rabinowitz, Boudin & Standard, from continuing to represent plaintiff in this action. Plaintiff moves for class action status pursuant to Rule 23, Fed. R. Civ. P. Plaintiff Joan Hull is an employee of defendant Celanese Fibers Marketing Company (CFMC) a division of Celanese. Her complaint charges Celanese, CFMC, two officers and three directors



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of Celanese with violating Title VII of the Civil Rights Act of 1964 because of alleged discrimination on the basis of sex.

Hull filed charges with the Equal Employment Opportunity Commission in September 1972. These charges were referred to the New York State Division on Human Rights which made a finding of probable cause. EEOC then advised plaintiff in July 1973 that she was entitled to institute a civil action, which she did in this Court in August 1973. The defendants have answered, denying the material allegations of the complaint.

In July 1972, two months prior to Hull filing charges with EEOC, one Donata Delulio was hired as an attorney on the Celanese corporate staff, and in February 1973, was assigned to work on the Hull case then pending before the New York State Division on Human Rights. Her work on the Hull case continued for six months ending in September, a month after the service of Hull's complaint. During that six months, in her own words, Delulio did considerable work on the Hull case:*

*Delulio letter to Ass'n of Bar, January 29, 1974.

> During the six months that I worked on that case I studied the general regulations of the Equal Employment Opportunities Commission, its procedures and the law on sex discrimination generally. I obtained specific information from the personnel department of the division concerning salaries and hiring practices. I attended on [sic] interview of the employee's [Hull's] superior, and attended one interview of another division employee. I participated in a conference with outside consultants hired by the corporation to prepare statistical information regarding employment within the division. I obtained inter-office memoranda and prepared a memorandum myself regarding the case.*

About the time she stopped working as a lawyer on the Hull case, Delulio began a social friendship with plaintiff Hull, first meeting her in September 1972, and thereafter lunching together. In November 1973, Delulio obtained from Hull the name, address and telephone number of her attorneys. On November 9, she met Ms. Walster of the firm. Subsequently, after a firm meeting at which a possible conflict was discussed, the firm undertook to represent her. From that time up to the time of Delulio's motion to intervene there were meetings between Delulio, Hull, other proposed intervenors and attorneys in the Rabinowitz firm at which times the Hull case was discussed by all participants. During this time

*According to numerous affidavits of Celanese officers, counsel, etc., Delulio's participation in the Hull defense was far greater than her letter recites, but I need not resolve that difference for the purpose of this motion.

Delulio and Hull continued both their social and litigative relationship. In early March 1974, when Delulio spoke to her superior at Celanese about an employment complaint, Hull accompanied her, saying, when questioned, that she was a "witness."

In March 1974, the Rabinowitz firm made a motion to permit Delulio to intervene as a plaintiff in the Hull action. Celanese opposed and made the instant cross motion for disqualification of the Rabinowitz firm in the Hull action itself.* In preparation for that motion, members of the Rabinowitz firm conferred with Miss Delulio and obtained from her the basis for her factual allegations of discrimination which were embodied in a proposed amended complaint, as well as preparing two factual affidavits on the motion.**

These affidavits contain such statements as the following:

> I did attend one meeting relating to Marilyn Karnes [a proposed intervenor] although I do not recall Sims attending that meeting. It was a very short meeting and I was simply told that the corporation hoped to encourage Ms. Karnes to leave.
>
> * * *

*Delulio's motion to intervene was denied, ____F.Supp.____ (1974).

**While conceding that she may possess privileged information, these facts revealed by her to her attorneys were based, she says, not on any confidential information but upon her own "experience and observation as an employee of the company." (Aff. April 9, 1974, p.3).

> I believe that the discrimination to which I have been subjected is basically the same as that complained of by plaintiff Hull. My experience as a member of the Celanese corporate staff leads me to believe that the defendants discriminate against women in all divisions and at all levels of employment at Celanese.
>
> * * *
>
> I, like plaintiff Hull, have been subjected to various forms of sex discrimination by the defendant, Celanese, particularly with respect to hiring, promotions and transfers, salary and raises, training and education programs, public relations and client good-will activities.

The foregoing contents of affidavits prepared by Delulio and the Rabinowitz office are some evidence, in my opinion, of the possibility that Delulio, unquestionably possessed of information within the attorney-client privilege, did in fact transmit some of it to the Rabinowitz firm, consciously or unconsciously. Put another way, Celanese argues that during the course of the relationship between Delulio, Hull and the Rabinowitz attorneys, the Rabinowitz firm had placed itself in a position where it might have been the recipient of improper disclosure from Delulio, which disclosure might in turn be used in the Hull case against it.

This appears to be a case of first impression. Three valid interests are involved. The first is plaintiff's right to counsel of her own selection; the second is the public's interest in the scrupulous ad-

ministration of justice; and the third is Celanese's right to a trial free of the risk of even unintentional use against it of matters within the attorney-client privilege.

Initially I gave much consideration to holding a hearing to determine if there had been any actual disclosure by Delulio to the Rabinowitz firm of anything learned by her in confidence, reasoning that as to Celanese's interest, supra, the concern was one of actual disclosure. However, I concluded that a hearing would be self-defeating since it would be necessary to reveal to the Rabinowitz firm in some specificity the extent of Celanese's disclosures to Miss Delulio in the course of ascertaining to what extent, if any, that information reached them. Emle Industries, Inc. v. Patentex, Inc., 478 F.2d 562 (2d Cir. 1973), at p. 591 supports my conclusion that a hearing is inappropriate.

Having ruled out a hearing, the remaining task was to determine which interest or interests were to be given preference since they are, in this situation, irreconcilable. Thus, while Miss Hull unquestionably has a right to counsel of her choice, she may waive that right by her conduct. I conclude that, balanced against the interest of Celanese,

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her interest is the lesser and factually has been waived. Miss Hull was actively involved in becoming Delulio's friend and endeavoring to make her a fellow plaintiff long before Celanese knew Delulio had herself filed charges.* Hull knowingly permitted, if indeed she did not promote, the acceptance by her counsel of a potentially disqualifying fellow-client. While Hull cannot be charged with knowledge of the Canons of Ethics, I feel that she should have sensed a basic impropriety in the relationship with Delulio which it was hers to avoid, and of which Celanese was wholly ignorant.

In this connection, while I give full credit to the Rabinowitz attorneys' affidavits, asserting an effort to avoid the disclosure to them of any confidential information from Delulio, and their belief that they succeeded, I feel that they were remiss in not immediately recognizing either the substantial risk of actual disclosure, or the fact that their retention would create the

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***Delulio started her friendship with Hull in September 1973. She filed charges with the EEOC in November. On December 17, at a lunch, she having still not told Celanese of her actions, a fellow counsel discussed the Hull case with her -- a conversation she did not endeavor to stop. The uncomfortableness of this situation, however, induced her to write to her superior two days later telling him that she had filed charges with the EEOC and that she "may wish to intervene in the Hull case."**

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"appearance of impropriety"* because of the opportunity for improper disclosure. I conclude that as between Hull's interest in the firm's continuing to represent her, the public's interest in the scrupulous administration of justice, and Celanese' interest in its freedom from risk of use against it of privileged information, and noting that Celanese had no knowledge of the firm's retainer until over a month later, the interests of Celanese and the public must be given preference.

Consequently, I am unwilling, against this background, to impose upon Celanese the slightest risk of even unintentional use against it of privileged information learned by Delulio while a member of its legal staff working on this very case.

For the foregoing reasons, Celanese' motion to disqualify plaintiff's counsel is granted. I defer consideration of plaintiff's propriety as a class representative until she is hereafter appropriately represented, and therefore deny her class

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* ABA Canons of Professional Ethics No. 9.

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action motion at this time without prejudice.

SO ORDERED:

July 12, 1974.

U. S. D.J.

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NOTICE OF APPEAL

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
Aug 15 2 10 PM '74

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOAN HULL, on behalf of herself and others similarly situated,

Plaintiffs,

-against-

CELANESE CORPORATION, CELANESE FIBERS MARKETING CO., JOHN W. BROOKS, VERNON E. JORDAN, GRANSON M-P MURPHY and DR. JEROME B. WIESNER, Officers and Directors of CELANESE CORPORATION, and ALLAN R. DRAGONE, President of CELANESE FIBERS MARKETING CO.,

Defendants.

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73 Civ. 3725 R.D.

NOTICE OF APPEAL

Notice is hereby given that Joan Hull, plaintiff above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the order disqualifying plaintiff's counsel entered in this action on the 17th day of July, 1974.

Dated: New York, New York
August 14, 1974

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